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THE SITUATION IN CENTRAL AMERICA:
PROCEDURES FOR THE ESTABLISHMENT
OF A FIRM AND LASTING PEACE AND
PROGRESS IN FASHIONING A REGION
OF PEACE, FREEDOM, DEMOCRACY AND
DEVELOPMENT

SECURITY COUNCIL
Forty-eighth year

Note by the Secretary-General

The attached document contains the report of the Director of the Human Rights Division of the United Nations Observer Mission in El Salvador (ONUSAL) up to 30 April 1993. As will be recalled (see S/23999, para. 3), it was decided that ONUSAL's work in relation to the San José Agreement on Human Rights (A/44/971-S/21541, annex) would be the subject of a separate series of reports.

ANNEX

Report of the Director of the Human Rights Division of the United Nations Observer Mission in El Salvador up to 30 April 1993

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I. INTRODUCTION

1. In the sixth report it was stated that, starting in February 1993, "with a view to reporting more regularly to the Secretary-General and the General Assembly on the implementation of the San José Agreement (A/44/971-S/21541, annex) and of the human rights components of the other peace agreements, the Human Rights Division [of the United Nations Observer Mission in El Salvador] will submit quarterly reports" (A/47/912-S/25521, para. 5). The seventh report, which covers the period from February to April 1993, is being submitted in compliance with that decision by the Director of the Division, Mr. Diego García-Sayán.

2. During the period under review, the Commission on the Truth released its report on the investigation of serious acts of violence that have occurred since 1980, in accordance with the mandate given to it under the Mexico and Chapultepec peace agreements. The impact of the report of the Commission on the Truth on Salvadorian society has perhaps been the most important human rights development during the period covered by this report (February, March and April), demonstrating yet again that peace and democracy presuppose a system which guarantees the effective exercise of human rights. Above and beyond reactions resulting from a report of this nature, what is important is that the Parties should fully keep their promise to implement forthwith the recommendations of the report, which are mandatory in nature, as are the other undertakings assumed by the parties under the various peace agreements. ONUSAL will verify the implementation of these obligations.

3. The structure of the present report does not differ substantially from that of the sixth report. With regard to the administration of justice it includes two situation analyses relating to habeas corpus and violations of the guarantee of due process which have been identified in judicial practice as major areas. Both analyses were carried out with a positive aim, namely to contribute, at the diagnostic level, to the task of modernizing and reforming the administration of justice which was established by the peace agreements and started with the constitutional reforms adopted in 1991.

4. With respect to the verification of individual freedoms and fundamental rights, the report confirms the trend towards a progressive improvement in the enjoyment of human rights together with the subsistence of violations - some of them serious and systematic - in certain categories of rights.

5. In accordance with the provisions of the San José Agreement, the Parties undertook to give their earliest consideration to any recommendations made to them by the Mission. This provision of the San José Agreement has a decisive impact on the perception of active verification as practical and useful work, a perception which is, quite rightly, sustained by the possibility that the findings may lead to normative changes, administrative arrangements, alternative policies or conducts which may help overcome the problems and expand the level of enjoyment of human rights. Viewed thus, the recommendations of the Human Rights Division are not acts which are isolated from the shared concern of the Parties and of Salvadorian society as a whole. They are, on the contrary, a reflection of the general national consensus regarding the need for legislative changes, political or administrative decisions and lines of institutional

conduct all aimed at moving forward towards building a State that will be a guarantor of human rights.

6. Accordingly, it has been deemed advisable, on this occasion, not to include further recommendations in addition to those already made - which are, in themselves, numerous - but to put the emphasis on defining specific lines of action to facilitate implementation of those recommendations, that being the first priority of ONUSAL's active verification.

II. OVERALL ASSESSMENT OF THE SITUATION

7. In reviewing overall trends of human rights in El Salvador, the Human Rights Division, referred, in its previous report, to two aspects which appear to have a substantive impact on implementation of the peace agreements in terms of the promotion and protection of human rights.

8. First of all, the interrelationship that exists between full implementation of the peace agreements, consolidation of democratic life and the rule of law as essential components of the social, political and institutional "environment", is a prerequisite if monitoring of the legality of human rights is to function effectively.

9. Secondly, and as a conclusion derived from the preceding premise, it was pointed out that the continuation over time of existing trends towards improvement, and their extension to categories of rights which still present disturbing violations, depends on a sustained pace in the execution of the peace agreements. That is particularly important if we take into account that the positive trends that have been noted may be related to the system of protection which ONUSAL's presence in itself signifies.

10. The evolution of developments subsequent to the sixth report corroborates the validity of these remarks. The basic trends noted during the months of February, March and April continue to point to the existence of an ambivalent situation, for although progress is being made, at the same time there are still incidents and situations - some of them serious - which disturb ONUSAL, the human rights community of El Salvador and the international community.

11. On the positive side, we see continuation of the improvement noted in respect of cases of torture and enforced disappearances. In the sixth report, the verification carried out by the Human Rights Division established that no violations of that kind were recorded during the period from June 1992 to January 1993. This positive development confirmed trends which had been noted some months earlier.

12. During the months of February, March and April 1993, these very encouraging results were confirmed in the case of enforced disappearances. However, one case of torture has been confirmed and also a number of homicides in which the victims showed clear signs of torture prior to their death. These acts have aroused the concern of the Salvadorian church and of non-governmental organizations; the Government also has expressed consternation because of the assumption that these practices might herald a return to old ways.

13. Continuing with the positive trends, it is well known that the Office of the National Counsel for the defence of human rights is becoming increasingly active and that its autonomy, which is necessary if it is to perform its functions appears to be growing; what is more important, it has begun to win the confidence of the population.

14. In addition, attention should be drawn to the commendable promotion of judicial reform, which began with the constitutional reforms in pursuance of the provisions contained in the peace agreements. The Ministry of Justice's normative proposals, which include not only specific initiatives but also substantive reforms, reflect a willingness not only to comply with the agreements but also to modernize the administration of justice with a view to guaranteeing human rights.

15. On the side of the scale which is still clearly disturbing we find a variety of acts. They range from those relating to specific categories of rights in which there is a downward trend in the number of violations (right to life, right to integrity, right to security, arbitrary detention, violation of due process of law), to more general aspects relating to the resurgence of intolerant attitudes that are incompatible with the view of the Peace Agreements as an instrument for promoting national consensus in order to consolidate the rule of law and democratic life.

16. Of these acts and situations two have had an impact on national life during the period covered by this report. On the one hand, there have been more than a dozen homicides which bear clear signs of having been organized and, on the other, following publication of the report of the Commission on the Truth, there have been some reactions openly opposed to the peace agreements.

17. Concerning the extreme violations of the right to life which have occurred, the Salvadorian Church and non-governmental organizations have sounded the alarm regarding the possible of a reactivation of the so-called death squads.

18. Notwithstanding the fact that, in the majority of cases, ONUSAL verification has ruled out the presence of squads, there is no doubt that there have been homicides which bear the signs of having been organized and involving methods and procedures similar to those which, in the past, were used by the death squads.

19. With regard to the impact which the report of the Commission on the Truth has had on the State and on society, reactions varied. There were public threats made through paid advertisements sponsored by the intolerant sectors. Some institutions representative of the State also adopted a confrontational attitude. All this generated a relatively tense climate which the Office of the National Counsel for the Defence of Human Rights referred to as a disturbing resurgence of social polarization.

20. However, the parties, through their highest representatives, in their official statement adopted an attitude consistent with the obligations stemming from the peace process. The President of the Republic pointed out that the recommendations of the report were mandatory and that the Government would therefore carry them out, as is natural, within the framework of the Constitutional provisions. The Frente Farabundo Martí para la Liberación

Nacional (FMLN) expressed its determination to carry out the recommendations fully. Thus, the parties once again charted a course of conciliation and national understanding as the sole means of giving renewed impetus to the implementation of the peace agreements.

21. The fact that there are strengths and weaknesses in the enjoyment of human rights does not mean that the current situation resembles that of Scylla and Charybdis. It is rather an expression of the complexity of the transition towards democracy, a process in which progress has been made towards a significant improvement in the enjoyment of human rights, particularly when compared to the situation that existed prior to the peace agreements; however, at the same time, it shows that there are deficiencies and difficulties in dealing with equal vigour with problems and conducts shaped over a long period of time during which violence was a sign of the times.

III. ANALYSIS OF ACTIVE VERIFICATION OF THE HUMAN RIGHTS SITUATION

A. Right to life

1. Deaths resulting from the violation of juridical guarantees and summary, arbitrary or extralegal executions

22. The finding of the active verification during the three months covered by this report shows a general persistence of the basic trends noted in the sixth report in respect of admissible complaints regarding violations of the right to life.

23. It is symptomatic that complaints of violations of the right to life, integrity and security of person, considered as a whole, constitute the first category of complaint, accounting for 49.8 per cent of all complaints declared admissible.

24. A breakdown of these figures shows that complaints of violations of the right to life accounted for 19.7 per cent, those regarding violations of the right to integrity of person for 18.91 per cent and those relating to security of person for 11.19 per cent. It is important to draw attention to the increase in the number of complaints regarding the right to life. During the period from June 1992 to January 1993, covered by the sixth report, the number of complaints regarding the right to life accounted, on average, for 7.16 per cent of all complaints declared admissible. During the three months covered by the present report, this proportion has increased and these complaints now account for 19.7 per cent of all complaints (in San Salvador the figure is 26.92 per cent and in Usulután, 33.33 per cent).

25. These indicators should be supplemented by others relating to ordinary violence; during the period in question, these show a total of 258 deaths, that is to say an average of 2.8 deaths per day.

26. Verification of complaints regarding arbitrary executions or extralegal deaths shows, moreover, a persistence of the trends outlined in the sixth report, particularly with regard to the growing presence of methods that clearly indicate the existence of organized homicides. In most cases, these are not

politically motivated, although in a significant number of cases it is difficult to draw the line between what is strictly criminal and what is political, particularly because the perpetrators remain unidentified and because of the deficiency of the criminal investigation. At the same time, a large number of violent deaths continue to be recorded in the country, resulting from criminal actions, acts or "social cleansing" and "private justice".

27. The violence of the organized homicides, the kind of suffering inflicted on the victim, the repetition of the modus operandi by the perpetrators and the high percentage of perpetrators who remain unidentified (19.15 per cent), indicate that there is an urgent need to give an absolute priority to investigating and clarifying these incidents, particularly in order to make sure that they do not remain unpunished.

28. Referring to this type of homicide, both the Legal Protection Office and the Archbishop of San Salvador, Monsignor Gregorio Rosa Chávez, have pointed out that, in their view, most of these crimes can be attributed to the death squads.

29. Given the serious implications which a resurgence of criminal actions by the death squads would entail for the enjoyment of human rights in El Salvador, the ONUSAL Human Rights Division has paid particular attention to verification of those cases which Legal Protection Office believes to be attributable to the squads, in particular, the cases of Francisco Parada Ochoa;
Miguel Angel Rivera Zapata and Maximino Rivera Zapata;
Juan Carlos García Panameño and Manuel de Jesús Panameño García;
José Alberto Loyola and Maira Roxana García; Aristides Ventura Soriano;
Julia Maribel Ruiz Morales; José Elías Martínez Cortéz;
José Mauricio Palomo Velasco and Juan Gualberto Araujo Cardoza;
Alma Morena Marisol Rivas; Francisco Alberto Mejía Miranda;
César Elías Romero Hernández and Ada Lisset Ramírez;
Jorge Adalberto Franco Hernández and Santos Pablo Osegueda Ayala and a few others where the victims were not identified.

30. Upon verification most of these cases have been found to be ordinary homicides; however, others, such as those of García Panameño and Panameño García; José Mauricio Palomo Velasco and Juan Gualberto Araujo Cardoza; and Jorge Adalberto Franco Hernández and Santos Pablo Osegueda Ayala do bear the hallmark of an organized crime in which political motivation appears to have been a factor.

31. Given these cases and, in general given the violations of the right to life, whether in the form of arbitrary execution, extralegal homicide or "private execution", the recurrence of the lack of effective police and judicial investigation points to the existence of impunity and to the State's responsibility, on the grounds of omission, because it failed in its duty to provide guarantees.

32. Some of the cases which are most representative of these trends are outlined below:

(a) José Mauricio Martínez (Case No. ORSS/2144/93)

33. On 4 February at approximately midnight, the victim, who was 25 and president of the Dos de Mayo cooperative located in Los Naranjos canton, municipality of Nejapa, was sleeping in the cooperative offices, together with another associate, whose turn it was to be on guard. According to the latter, two individuals overpowered him, threatening him in whispers, and then took him some five metres from the house. From there he heard another two people close by beating Martinez, who was being held; later he heard sounds as though Martinez was being choked; that was followed by some screaming and two shots, those that killed Martinez. According to the witness, he was unable to see whether the assailants were wearing uniforms, only that three of them were dressed in black.

34. Subsequently, the perpetrators entered the cooperative storehouse where they found the bookkeeper, Alfredo Mayorga; the latter said that, due to the darkness and the fact that they forced him to bend over, he was unable to see or recognize anyone, he was able only distinguish that one of the men was tall and slim. He also said that the assailants asked him for money and weapons and that they made off with 2,000 colones; he therefore assumed that they knew that there was money in the cooperative that day.

35. Two spent cartridges from an M-16 rifle were found at the scene; presumably they came from the weapon with which Martinez was murdered, but the Nejapa Criminal Court did not order that an autopsy be performed; the examination was conducted by two experts with the title of "employees" who merely noted a bullet wound below the shoulder blade with an exit hole and powder burns and signs of several blows. The judge took a statement from the victim's father, Feliciano Martinez, and the witness, Justo Estrada Vides. The Court of the First Instance called a few more witnesses but not those who have been denounced as possible authors of the crime, even though the latter have been fully identified. No police investigation has been carried out nor has the judge ordered one.

36. Acquaintances of the victim pointed out to ONUSAL that Martinez and other members of the cooperative had been threatened several times by community workers and neighbours belonging to the Fuerzas Armadas de Liberación (FAL), adding that, in January, one of them had been looking for Mauricio but hadn't found him. They also said that they had seen those people carrying weapons.

37. ONUSAL interviewed some of the cooperative's neighbours members of FAL who were accused of being accomplices of the alleged authors; they stated that although they had, indeed, had problems with some of the members of the cooperative, having been expelled a few months earlier, they did not have any problems with Martinez, insinuating that the cooperative itself might be involved in the crime since the victim was not concerned with politics and the cooperative was managed by the Fuerzas Populares de Liberación (FPL). It was also noted that some community workers of the Federacion de Associaciones Cooperativas de Producción Agropecuaria de El Salvador (FEDECOPADES), with which the cooperative is affiliated, do indeed belong to FPL.

38. Individuals whose identity shall remain confidential told ORSS that during the war, FAL asked the cooperative to collaborate by taking in combatants but

that FEDECOPADES objected because of its ties with FPL. None the less at the time the board authorized some FAL families to go and live at the cooperative; it is these people who are now having problems.

39. They went on to say that FEDECOPADES is forcing projects on the cooperative, projects which are being financed with fairly high-interest loans, and that Martinez, in his capacity as President, had complained about this. Martinez had also discovered that someone had stolen 20,000 colones from the cooperative, which crime, according to several people, could have been committed by some members who have a close relationship with FEDECOPADES and who, they allege, are the same people who had threatened to kill Martinez if he did not expel the members of FAL who are still in the cooperative. Finally, they added that many of the members of the cooperative had been frightened by the demands which the Federation is making on the cooperative.

40. According to the information which ONUSAL has collected, some of the people who made the above complaint do not belong to, nor do they have any ties with, any political group.

41. According to this account, it cannot be said with certainty that the authors of the homicide are former FMLN combatants. Nevertheless, according to the information received, there is the possibility that the motive which led to the murder of José Mauricio Martínez might be related to the struggle between the above-mentioned FMLN factions, for control of the Dos de Mayo cooperative. The case has not been confirmed as one of extralegal execution.

(b) Fredy Fernando Torres Portillo (Case No. ORSS/2177/93)

42. The victim, aged 30, a political leader of FMLN in the municipality of Mexicanos and a member of Resistencia Nacional, was found wounded at 3 a.m. on 21 February 1993 in Libertad Park; he had been shot at point blank range. He was dead on arrival at Rosales Hospital and was therefore transferred to the Institute of Forensic Medicine where an autopsy was performed that same day by order of the Fifth Magistrate's Court of San Salvador. The autopsy found a bullet wound in the left-hand preauricular region with powder burns. In other words the victim was shot in the back of the head at close range and must therefore have known and trusted his attacker.

43. According to statements made by persons close to him, Fredy Torres had been attacked earlier, on 2 January 1993, when he was wounded on the left arm with a cutting weapon; he managed to escape because he was a judo champion. According to those same people, he did not file a complaint because he was considering running for mayor of Mejicanes.

44. ONUSAL confirmed that on 21 February 1993 at approximately 2 a.m., Fredy Fernando Torres Portillo was eating a few blocks away from Libertad Park with his brother-in-law Mario Alberto Fornet Orellana, when someone he knew came up saying that he had to speak to him. Torres told his brother-in-law to wait for him, saying he would be back in a few minutes, and rode off on his motorbike with his friend. Some 15 minutes later the friend returned on the motorbike saying that Fredy had just been shot in Libertad Park and asked the brother-in-law to take him immediately to the ESSO gas station in Lourdes district because he was in a hurry to get home. After dropping the friend off

at the gas station, Fornet Orellana returned to see what had happened to Fredy but did not find him because he had already been taken to Rosales Hospital.

45. The name of the acquaintance who went off with the victim is José Luis Cea, alias "Cecilio", and he works for the San Salvador National Police as an artist. when interviewed by the San Salvador Regional Office (ORSS), he acknowledged having known Fredy Fernando Torres Portillo, and said that he had learned of the latter's death on reading the newspaper on Tuesday, 23 February 1993, that is to say, two days after the event. He also said that on Saturday, 20 February 1993, he had bumped into Fredy at approximately 10 p.m. at an establishment in the centre of San Salvador and had merely greeted him. He confirmed that he worked with the San Salvador National Police, saying that his job was to call in every day at 8 a.m. to ask whether there was anything for him to do. He also acknowledged that he carried police identification.

46. The victim's family informed ORSS that, Fredy Torres had stated that, in 1986, after he had disappeared and was being interrogated by the Treasury Police, Cecilio had been present during the torture sessions. ORSS was also assured that Cecilio knew perfectly well that Torres was a member of FMLN since they were constantly talking politics in a friendly fashion. None the less, Cecilio denied having known what political party Fredy belonged to.

47. The case was heard by the Fifth Magistrate's Court of San Salvador, which merely ordered an autopsy and received the complaint of the victim's family.

48. The main witness, Mario Fornet, refused to go to make a statement - apparently out of fear - and did so only when the judge summonsed him; he did not have anything to say which might help to clarify the case. He told ONUSAL that Cecilio had gone looking for him at his home but had not found him and had told his mother "that Mario would know why he was looking for him".

49. Some stains, possibly blood stains were found on the right-hand side of the victim's motorbike; that was confirmed by an examination carried out by experts from the Institute of Forensic Medicine. That would seem to indicate that the victim was seated on the stationary motorbike when he was killed, since the motorbike showed no signs of having fallen to the ground. Since he was shot at point-blank range, one can only assume that the perpetrator was seated behind him. The National Police informed ONUSAL that officers from that unit had arrived on the scene a few minutes after Fredy Torres was shot. However, the Department of Investigations does not know who those officers were, nor does it have any report concerning what happened. This is because the officers "were only on patrol and they do not report to the Department when they see such things, <u>because they may create problems for themselves</u>".

50. On 18 March 1993 the National Police arrested José Luis Cea, alias "Cecilio", on suspicion of Fredy's murder. He was later released, since Mario Fornet Orellana, brother-in-law of the deceased, failed to recognize him in a line-up. At the same time ONUSAL was informed that the National Police had been informed by confidential sources that José Luis Cea was the person responsible for the crime.

51. Records of the measures taken by the National Police against José Luis Cea, alias "Cecilio" (a member of that institution), a suspect in the murder of

Fredy Torres, mysteriously vanished. The Fifth Criminal Court, by means of letter No. 785, dated 23 March 1993, asked the Director-General of the National Police for information concerning the measures taken by that police force in connection with the investigation into the death of Fredy Torres. To date no reply has been received.

52. It should be remembered that Cea remained three days in captivity at the National Police headquarters and that a line-up was held, of which a record was made, and a member of the ONUSAL Regional Office at San Salvador was present.

53. It was further noted that the officer of the National Police who handled the investigation and who collaborated with ONUSAL was unexpectedly transferred from his post.

54. The conclusion of the active verification is that the murder was probably committed by Cecilio. Nevertheless, it is not known what his motive might have been. The behaviour of the National Police in connection with the detention of the accused, and the subsequent disappearance of the records of the investigation they conducted would seem to indicate that more people were involved in the crime or in its cover-up than just the perpetrator. The case has been confirmed to be an extralegal execution.

(c) José Alberto Delgado Moyola (Case No. ORSS/2182/93)

55. On 16 February 1993, José Alberto Delgado Moyola and a friend, Mayra Roxana Rodríguez García, were detained by two men who were waiting for them near her house where they were headed.

56. According to Rodríguez García, the assailants were driving a dark coloured Volkswagen, and one of them had a pistol. They claimed to be detectives and that they had come to take the victims to San Miguel because Mr. Delgado was a kidnapper of children. The victims were pushed into the car and driven off towards the road leading to San Martín. In the car Delgado was beaten, and when his friend tried to intervene they shut her up telling her that she was not his wife only his lover. They stopped the vehicle on the road leading to San Martín, made them get out of the car and began to beat them. The woman, who was being beaten and had received a machete wound, managed to escape because a driver who happened along at the time, seeing her covered in blood, stopped his minibus and fired on the attacker's vehicle and picked her up. After driving about a kilometre and a half towards San Bartolo, they ran into a National Police patrol and returned with the officers to the scene of the attack where they found only Delgado who was seriously wounded. The driver of the minibus drove Delgado and Mrs. Rodríguez García, both of them seriously wounded, to San Bartolo hospital, but Delgado died on the way. The only witness is this woman, and she does not know whether the policemen who intervened came from San Bartolo or from San Martín and is unable to indicate exactly where the attack occurred or to give any details regarding the minibus, which might help locate the driver.

57. Delgado's shoes and socks, together with the sum of 700 colones were stolen. The woman lost her purse containing her papers and 450 colones.

58. The victim and his friend worked at the Department of Highways of the Ministry of Public Works, Eastern Office. He was a member of the Worker's Association of the Ministry of Public Works (ATMOP) but was not an active participant, nor was he engaged in politics; he had never had any problems with his co-workers. He was married and had two children with whom he lived.

59. The victim was known to be a moneylender; and the day of the attack, he had collected exactly the sum of money which was stolen from him. The members of the ATMOP Board made public statements, denouncing the murder as an attack on the union. Nevertheless, when ONUSAL asked for their assistance in clarifying the case, they showed no interest and even confirmed that Mr. Delgado was not well-known to them.

60. The murder would appear to be a result of the attack, which was prompted by the fact that the victim was a moneylender. Nevertheless, it is disturbing that, once again, the State apparatus did nothing to investigate and clarify the crime. It is an ordinary crime which was initially reported by Legal Protection as an arbitrary execution carried out by death squads.

(d) Ada Lisset Ramírez and César Romero Hernández (Case No. ORSS/226/93)

61. This case was also reported by Legal Protection as an execution carried out by death squads. The victims left their home on 2 April 1993 in a pick-up truck and did not return. Their bodies bearing stab wounds were found later on different days in different locations in Tamanique district, Department of La Libertad.

62. ORSS found that there was a file on each victim in the Court of First Instance of the port of La Libertad, and that the relationship between them was not known. On 3 April 1993, a forensic examination was conducted on the body found in Tanques de Atami, El Iscanal hamlet, El Palmar canton. The report stated that there was no one living in the immediate vicinity and that no traces or signs of a struggle had been found, adding that death was due to a hypovolemic shock. The judge mentioned the complete lack of collaboration on the part of the Tamanique National Police in the investigation. At the request of the Prosecutor, the body was exhumed on 24 April but no autopsy was carried out. None the less the medical examiner reported that there were no signs of rape. A member of the family indicated that a former boyfriend of the victim, who was still trying to see her and who lived in San Miguel, might be responsible for the crime. The parents blamed César Elías Romero Hernández until he, too, turned up dead. The pick-up truck in which the victims had been travelling, which was red and had the licence plate No. P-213321, was found the same day, 3 April, by officers of the National Police.

63. The body of César Elías Romero Hernández was found at 2.30 p.m. on 6 April 1993 in a place called Solimar, El Zunzal canton. The forensic examination was carried out shortly thereafter, and the cause of death was found to be a hypovolemic shock caused by a puncture wound to the neck caused seemingly by a cutting instrument.

64. There is not sufficient information to affirm that there were any political motives or that this was the work of a death squad. Because no autopsies were performed it is impossible to determine convincingly whether the girl was raped,

or whether her boyfriend was tortured. The case was reported initially by Legal Protection as an arbitrary execution carried out by death squads. The active verification is inclined to classify it as an ordinary crime.

(e) La Fosa Community (Case No. ORSS/2293/93)

65. José Mauricio Palomo Velasco, Juan Gualberto Araujo Cardoza were killed and Juan Ramón Molla Bonilla and Alexander Antonio Palma Molina were wounded in a machine-gun attack carried out by unknown persons on 14 April 1993.

66. The following day witnesses told ONUSAL that the victims and two friends were playing cards on the steps outside Mauricio's house when, at 10 p.m., three hooded individuals entered the alley (one remained as lookout at the entrance) and opened fire on them.

67. The attackers left a note beside Mauricio's body, which read, "Executed for belonging to organized mafia gangs, since the police does nothing for decent people. The Angels of Death will finish off the entire La Fosa mafia".

68. The three criminals fled along the main street of the district, which terminates at Decimonovena Avenida Norte. Within five minutes, members of the Zacamil National Police arrived (on foot), saying that they had heard the shots. They came by way of the same street along which the perpetrators had fled; thus, according to all the statements compiled, the two groups must have passed each other on the way, but the officers of the National Police reported nothing and arrested no one.

69. At the scene of the incident, the policemen gathered up the spent shells and the note, and handed them over to the judge when he arrived for the examination at 11.30 p.m.

70. All those making statements spoke very favourably of the victims, describing them as decent, hard-working people who came home early and caused no trouble. They also said that they had been unable to recognize the perpetrators and did not know what the motive might have been.

71. It was also mentioned that some community residents were members of maras (organized criminal gangs) but that the victims had had nothing to do with them.

72. While those making statements talked freely of what had happened, no one could or was prepared to explain why it had happened. Several persons expressed the view that the Zacamil National Police were involved, especially because of their unexpected arrival.

73. On 24 April 1993, ONUSAL officials again talked with members of the community, who confirmed the above account; one of them stated that, before the war, FMLN had had substantial influence in the community, but that during the war, the First Brigade had maintained some three checkpoints in La Fosa, and that there had been a considerable National Police presence, which continues up to now.

74. The residents say that there are criminals in the community and that one such "terrorist" was murdered a month ago. They also say that criminals attack

people on Decimonovena Avenida Norte; it is rumoured that they recently robbed and raped the daughter of a colonel; and that the incident under consideration might have been an act of revenge. Some people accuse the National Police of being responsible for the killing.

75. ORSS also spoke with a (confidential) informant who is well acquainted with the impoverished communities. This person said that during the war, the First Brigade and the National Police had maintained a strong presence in La Fosa, and that a link exists even today with the San Salvador mayor's office. According to this informant, the "El Gallo" mara, a well-known, organized and dangerous gang, operates in the La Fosa community. The informant was to have looked into the incident, but before that could be done, the informant's contact was murdered. This person also told of other murders in which the perpetrators had left notes and threats signed "The angels of death" in several other communities. According to what the informant had heard, community residents believed the National Police to be implicated in this alleged death squad.

76. According to the report of the ONUSAL Police Division, the Zacamil National Police, instead of cooperating, obstructed its investigation into this case. The judicial follow-up of the case has been limited to arranging for removal and autopsy of the corpses and examination of the survivors. The statements of one of the injured parties and of two witnesses are also on record. No police investigation is in progress.

77. Once again, perpetrators of acts of this kind are going unpunished, due to a lack of will or inability on the part of the organs of State to investigate the acts and to punish the culprits. The elements present in this case may be indicative of the involvement of an irregular group which metes out "private justice".

(f) Alma Morena Marisol Rivas (Case No. ORSS/2315/93)

78. On 8 April 1993, the body of an unidentified woman was found with stab wounds in several parts of the body. Marisol Rivas worked at a restaurant located on Pasaje Araujo, house No. 7, San Pablo district, Cuscatancingo, a place frequented by bus drivers and conductors. The owner, Martha Ruíz de Murga, stated that at 5 p.m. on 7 April 1993, the victim went to a nearby ANTEL office to make a telephone call and never returned. On 8 April, her body was discovered by Cecilio Martínez, who reported the fact to the Mariona National Police. The medical examination was performed the next morning. The report describes multiple stab wounds, particularly on the right (4 cm) and left (3 cm) sides of the forehead, as well as the tearing off of the scalp, a wound in the back of the neck (15 cm) and the amputation of two fingers of the left hand. The report also records that there were "signs of [the victim] having been raped, in a normal and abnormal manner, and tortured, because there are lacerations on both breasts". The autopsy performed on that same day, 9 April, confirmed what was described in the inspection report with regard to the wounds and the evidence of rape, and also noted that the victim was approximately 20 weeks pregnant. The cause of death was a deep stab wound in the neck, fractures of the fourth and fifth cervical vertebrae and hypovolemic shock. However, the body was not burned, the eyes were not gouged out, and the jaw and teeth were not missing, as stated in the Legal Protection report. Marisol Rivas' body was identified by her mother on 14 April 1993.

79. The victim told her employer that she had been raped by two individuals in October 1992, but had not reported that fact to the authorities. She might have become pregnant as a result of the rape. The justice of the peace believes that the same persons may have attempted to rape her again and that the victim resisted fiercely, especially because she was pregnant, which would have incited her captors to even greater violence. The victim's boyfriend, Israel Alvarado, known as "Lito", had forbidden her to return to Chalatenango because he did not want her parents to know that she was pregnant by him.

80. The victim was kidnapped for the purpose of being raped. Despite the existence of signs of torture, there is no evidence whatsoever that the perpetrators were agents of the State or that they were trying to obtain any information from the victim. ORSS has not found any evidence which supports the view that death squads were responsible. It appears to have been an ordinary criminal act, although one with especially violent features.

(g) Vincente Reyes Correa (Case No. ORSS/2324/93)

81. On Friday, 16 April 1993, several individuals shot and killed Vincente Reyes Correa, aged 41, while he was driving his pick-up truck on the San Salvador-Santa Ana motorway. The victim had worked at the Treasury Police headquarters as a "trusted" driver for an army colonel who was the head of that police agency, until 1986. Reyes was known to his companions as "El Tigre".

82. On the date mentioned, the Reyes Correa brothers - Vincente, José and Adán - were travelling in the front seat of a yellow pick-up truck on the way to Presidio canton; having set out from the house of another brother who lives in the Santa María district, Mariona. Vincente was driving the vehicle.

83. At approximately 8.40 p.m., as the vehicle was travelling along the San Salvador-Santa Ana motorway and passing the landing strip at the old Atlacatl Battalion barracks, a blue pick-up truck, licence plate No. P-205005, crossed the motorway, blocking both lanes and forcing Vincente Reyes to stop his vehicle. Immediately afterwards, three of the unknown persons, who were armed with handguns, went up to Vincente and, without a word, shot him, seriously injuring him. Before being struck down, Vincente fired a 32-calibre pistol, without injuring his assailants. A fourth individual was waiting in the vehicle. In attempting to flee, the blue pick-up truck got stuck in a ditch and the assailants were forced to abandon it; they ran off towards Lourdes.

84. The second brother, José Heriberto, aged 23, who was riding in the middle front seat, was hit by six bullets, but managed to get away by his own means. The last of the brothers present, Adán, aged 17, known as "Pepa", escaped unharmed, and went to Vincinte's father-in-law's house to ask for help. The father-in-law, José Audón Orellana, lives in the El Progreso district, on Calle El Coco, Lourdes, department of La Libertad. He went, with others, to the National Police of the locality to ask for help; the police took their time dealing with coming. Among the residents who accompanied Audón Orellana was Manuel Eufrasio Lorensana, also known as "Pepa".

85. The group of relatives and other persons, together with policemen and members of the Green Cross, then went to the scene of the incident. There they found that the unknown persons had not stolen anything. The National Police

took charge of the abandoned vehicle, and one policeman stated, "I've seen that pick-up truck before". The vehicle had been stolen that morning by persons armed with pistols on Calle Santa Marta, Sonsonate, and a complaint had immediately been lodged with the National Police.

86. All the bullet holes were on the driver's side of the cab. three types of weapons appeared to have been used: a 9-mm, a 38-mm and a 32-mm. The victim was taken by Red Cross ambulance to Santa Tecla Hospital, where he was visited by the judge of the Second Criminal Court of Santa Tecla. He remained unconscious, uttering incoherent phrases, until he died in the hospital two days later. Out of fear, the relatives had not filed any complaint with the court.

87. Vincente Reyes had been living in Canada since the end of April 1986, immediately after leaving the National Police; he had left because he had been robbed and threatened at riflepoint by FMLN members. He had allegedly obtained a grant to study English in that country for which he had applied at the Canadian Embassy in Costa Rica. At the time of his death, he was employed as a caretaker at a Canadian school. There are indications that the murder was an extralegal homicide.

(h) Franco Hernández, Jorge Adalberto y Osequeda Ayala, Santos Pablo (Case No. ORSA/1071/93)

88. The corpses of the above-named persons were discovered on 17 April in Salinas de Acachapa canton, Sonsonate district. They had bullet wounds in the head, signs of ill-treatment and had their hands tied behind their backs. An FMLN flyer was found in one of Franco Hernández's trouser pockets.

89. ONUSAL is conducting careful follow-up of the criminal proceedings instituted in this case, initially in the Sonsonate First Magistrates' Court and later in the First Criminal Court of that city, where the case was brought to trial on 30 April. The criminal proceedings are in an initial screening phase. On the basis of the autopsy findings, which confirm that the victims were executed at close range, and the manner in which the bodies came to light, responsibility can be imputed to a clandestine organization using methods similar to those of death squads.

90. Violent deaths are continuing to occur and are showing a slight increase. The number of cases in which the signs and evidence point to an organization having instigated the homicides is also increasing.

91. With regard to the perpetrators named in complaints concerning arbitrary executions or extralegal deaths, the complaints declared admissible denounce as perpetrators persons unknown (34.1 per cent), persons linked to the armed forces (16.75 per cent), members of the National Police (14.85 per cent), irregular groups (8.95 per cent), persons linked to FMLN (6.86 per cent) and members of the Municipal Police (1.9 per cent).

(i) Guillermo Girón (Case No. ORSM/815)

92. Justice of the peace of Jocoro, Department of Morazán, aged 45. Worked as a bricklayer until June 1989, when he was appointed justice of the peace. Never

held any previous public post. Member of the Alianza Republicana Nacionalista (ARENA).

93. Murdered on 19 January 1993 at approximately 11.30 p.m. by persons unknown who shot him through the door in the access wall of his residence, from a distance of 10 metres, while the victim was in his patio. Having killed the justice of the peace of Jocoro, the unknown persons ran off, so that robbery can be discounted as a motive.

94. Although the number of individuals involved in the killing of Guillermo Girón is unknown, 42 spent 5.56-calibre shells of the kind used in an M-16 rifle, were found. The autopsy found that the victim had been shot seven times in various parts of his body. While the judicial investigation has not yielded positive results, ONUSAL believes that investigative means have not been exhausted in this case.

95. Both the examining magistrate and the National Police tend to discount political motives and to characterize the homicide as an act of revenge or "private justice". This is based on the fact that during the armed conflict, the justice of the peace of Jocoro remained in office, and was not subjected to attacks which made him fear for his life.

96. The background materials and evidence compiled during the investigation which the San Miguel Regional Office (ORSM) carried out indicate that political motives should be discounted. The justice of the peace of Jocoro belonged to ARENA; however, he had never been the target of persecution or attacks connected with his political activity. The testimony given by his widow suggests that relatives of Judge Girón, who were motivated by revenge, may have been involved in his murder. Moreover, ONUSAL is investigating the statement made by the sole eyewitness, who claims that uniformed personnel killed Guillermo Girón.

97. The court's efforts to investigate this grave act have been ineffective. The San Francisco Gotera National Police, who have recently been replaced by the National Civil Police, did not carry out any investigation leading to the identification of those responsible and, the Attorney-General's Office has played a passive role, as it has in many cases.

(j) Juan Carlos García Panameño and Manuel de Jesús Panameño García (Case No. SORU/0376)

98. Juan Carlos García and his cousin Manuel de Jesús Panameño left San Salvador at approximately 5 a.m. on Saturday, 13 February 1993, heading for San Miguel in a pick-up-type vehicle (a beige, 1981-model Toyota with tinted glass, licence plate No. P-95153). This vehicle is owned by José Roberto Alfaro Arévalo and was at the disposal of the Comité de Madres y Familiares de Presos Políticos, Desaparecidos y Asesinados de El Salvador Monsignor Oscar Arnulfo Romero (COMADRES).

99. According to what Juan Carlos García told his mother, Mrs. Emelina Panameño de García, a leader of COMADRES and a member of the Federación Latinoamericana de Asociaciones de Familiares de Detenidos-Desaparecidos (FEDEFAM), the purpose of the trip to San Miguel was to buy some spare parts for the vehicle which he was driving; he was to travel with his

cousin Manuel de Jesús, who planned to visit a friend, an ex-National Guard companion of his who lived in the Department of Usulután. Manuel de Jesús had described the purpose of the trip in this same manner to another cousin of his named René Garay García.

100. On that journey, between 5.45 and 6.15 a.m., the victims stopped to refuel at the Shell petrol station in the locality of Apastepeque, San Vicente.

101. Finally, according to the statements made by local residents who reported finding the corpses, between 7 and 7.30 a.m. that same day, on the road which runs from the Pan-American Highway to the hamlet of La Cebadilla (La Puerta canton, Mercedes Umaña district, Usulután), approximately 300 metres from the highway, they heard the sound of a vehicle, which then came to a halt; seconds later, three shots rang out; after a short interval, they heard a voice screaming, "Go on! Finish them off!" and, right after that, some eight to 10 shots in a row, just like the first ones. Some 15 minutes later - during which they remained hidden - they saw two persons running up the road 100 metres from the place where they stood. The witnesses described these persons as having a youthful appearance and wearing civilian clothes; both were carrying knapsack-type bags on their shoulders. When they approached the edge of the road, they saw the pick-up-type vehicle described above, with its left door open, and two bodies lying on the right side of the road. They immediately went to the Villa El Triunfo National Police offices to report the facts.

102. That same day, the corpses were identified as those of Juan Carlos García Panameño and Manuel de Jesús Panameño García, who were carrying their identity papers and other personal documents.

103. Juan Carlos García Panameño was the COMADRES propaganda chief. Since the age of 12 he had been an FMLN combatant. One of his brothers had been murdered by paramilitary troops on 7 September 1984.

104. Manuel de Jesús Panameño García, his first cousin, had been a medical orderly in the National Guard; he worked at the COMADRES day-care centre.

105. The initial judicial proceedings were carried out by the Mercedes Umaña Magistrates' Court and consisted solely of the removal of the bodies and examination of the victims.

106. The presence of ONUSAL observers at the scene of the incident on the day the bodies were found made it possible to demonstrate inconsistencies between the examination performed by the court and the observations made by ONUSAL. It was stated during the judicial proceedings that Juan Carlos's body showed a single bullet hole, whereas the ONUSAL observers noted seven. As to the body of Manuel de Jesús, four bullet holes are recorded in the dossier, the same number noted by the police observers, but no reference is made to the chafing wounds which were present on the right arm.

107. The report of the Mercedes Umaña National Police suffers from similar errors and inconsistencies.

108. With regard to the autopsies which should have been performed on both corpses, it should be noted that only one was performed, on the corpse of

Juan Carlos García Panameño, by the "Dr. Roberto Masferrar" Institute of Legal Medicine of San Salvador. Moreover the autopsy report is incomplete for it does not contain any description of the bullet trajectories, or of the X-rays or plates taken of the deceased's right arm.

109. The characteristics of the crime, the repressive acts which occurred prior to the death of one of the victims, the intimidation and threats which were directed, following the homicides, against persons linked to the victims by their political affinities with them or their participation in the investigations, and glaring deficiencies in the investigations carried out by the auxiliary organs of justice and judiciary confirm that this was an arbitrary execution, for which there is reasonable evidence of political motivation.

2. Arbitrary or extralegal attempted executions

110. During the period under consideration, six complaints of arbitrary attempted executions were declared admissible; they are symptomatic of the overall trend towards violation of the right to life. Verification efforts have shown that there is reasonable evidence of political motivation for some of these attempted executions.

3. Death threats

111. During the period from June 1992 to January 1993, complaints concerning death threats represented the largest proportion of complaints involving violations of the right to life. During the period from February to April 1993, this trend has continued, since complaints concerning death threats continue to account for the bulk - in this case 47 - of complaints declared admissible involving violations of the right to life. The active verification efforts made by the Human Rights Division indicate that some especially serious acts have occurred, because of the political components of some death threats. In most cases, the complaints are not investigated, and the State thus becomes responsible by omission.

112. The cases of Alirio Montes López and of the death threats against leaders of the Asociación Salvadoreña de Trabajadores de Telecomunicaciones (ASTTEL) are representative.

(a) Alirio Montes López (Case No. ORSS/2227/93)

113. Mr. Montes López, a member of FPL, filed two complaints with ORSS involving incidents which appeared to be related. The second of these complaints dealt with a kidnapping and death threats carried out, according to the victim, in Ilopango on 6 April 1993. Two armed men wearing civilian clothes forced him to get into a pick-up truck, where they placed a hood over his head. For some 30 minutes, approximately, the kidnappers threatened him and his children with death if he did not immediately cease his political activities. They used terms of a military nature, such as "carrying out orders", "negative" and "positive".

114. Montes López also stated that one of his captors had mentioned the economic and social forum which FMLN was attempting to set up in the town of Ilopango;

the other kidnapper told him to hold his tongue. This suggested to the victim that the mayor, or another member of the town council, who opposed the forum, might be linked to the incident.

115. A month prior to this incident, Montes López had been the victim of an attack and death threats by persons unknown. According to him, a vehicle had attempted to run him over in Ilopango on 9 March. Four days later, he was threatened with death by persons who were awaiting for him in a car parked a few metres from his house. These persons told him that he must stop organizing the residents of his community, and added that the threats also applied to the other three FPL members working in Ilopango.

116. On 27 April, ONUSAL observers spoke with the mayor of Ilopango, who confirmed that he had received an FMLN delegation complaining of the death threats to which Alirio Montes López had been subjected. According to the mayor, no comment was made regarding the kidnapping episode. The mayor stated that he did not know who the perpetrators of the act might have been and that he, personally, had no objection to the establishment of an economic and social forum in his town. He also referred to the good relations established with FMLN in Ilopango.

117. Mr. Montes López's situation, as he reports it, would appear to be very serious, since it would imply the existence of clandestine political groups dedicated to the intimidation of opposing forces. However, it must be admitted that it has not been possible to obtain independent verification of Mr. Montes López's version of the facts, since there are no known witnesses.

(b) Death threats against leaders of ASTTEL (Case No. ORSS/2236)

118. On 12 March 1993, at 8.15 a.m., two persons entered the main offices of the trade union, located in the Fatima building, Octava Avenida Norte and Tercera Calle Oriente, San Salvador. They went up to the secretary, who was the only person there, and in a threatening tone, inquired about the leaders in the following terms: "Are the guerrillas here? Tell them we're coming back later to kill them all." They then left the premises and, after remaining outside for 10 minutes, were picked up by a red Vitara vehicle with tinted glass.

119. The leaders were not at the offices that day because they had gone to the workplaces to explain to the rank and file the agreement reached on the previous day with the company management. It consisted of a wage increase amounting to 200 colones per month, starting in June.

120. The incident was not reported to the judiciary, because the victims decided not to do so. Verification of the case indicates that it was an act of intimidation against the lives of trade union leaders, who, in addition to their activity as workers' leaders, have had a public role in the discussion regarding the implementation of the recommendations of the Commission on the Truth.

121. Furthermore, there have continued to be cases of death threats against trade union leaders and of threats as an instrument of coercion and intimidation of witnesses in certain judicial investigations.

122. The sixth report drew attention to the urgent need for the National Police and the judiciary to conduct serious investigations into death threats; failure to do so would not only represent a failure on the part of the State in its duty to provide guarantees but would also mean that, by omission, the State was assisting the perpetrators to go unpunished.

123. Following the publication of the report of the Commission on the Truth, 1/ the illegal practice of making threats through paid advertisements in some of the print media continued. As in the preceding period, the so-called Movimiento Salvador Libre once again took out paid advertisements threatening officials of the United Nations Observer Mission in El Salvador. Up to the time when this report was drafted, there has been no information about any investigation that might have been carried out or that might be under way to identify those responsible for these threats, which undermine the spirit of national reconciliation chosen by the Salvadorian people as the appropriate route for consolidating democracy, strengthening the rule of law and progressively ensuring the effective enjoyment of human rights.

B. Right to integrity of person

1. Torture

124. Three complaints of torture have been made, one in San Salvador and two in Santa Ana. In the case reported in San Salvador, the findings of the verification are that the torture never took place. In the Santa Ana cases, the findings of the verification were as follows:

(a) Gerardo Palma Ramos (Case No. ORSA/1055/93)

125. Active verification has shown that no torture took place and that the complaint was falsely made by the alleged victim because he had been arrested for the crime of raping a minor.

(b) José Noé Barías Galicia (Case No. ORSA/1009/93)

126. The victim, a day labourer aged 20 living in the Department of Ahuachapán, was abducted on 4 February at the Costa Azul (Acajutla) beach by soldiers on active duty in Military Detachment No. 5 (DM-5). In the course of the night he was beaten to try to induce him to confess to a robbery. The following day, he was left on a hill in Cojutepeque. The soldiers were working on the construction of a beach house belonging to the commander of the unit, Colonel Antonio Hernández Hernández.

127. The Santa Ana Regional Office accompanied the victim when he went to file a criminal complaint in the Court of First Instance of Acajutla; he was given medical tests there, which confirmed the complaint. After active verification, the case was classified as torture to obtain a confession.

128. The fact that a case of torture has been reported does not basically change the overall trend noted in the sixth report; during the period covered by that report, no torture was found to have taken place. Furthermore, it is not an indication that torture is currently being used as part of the system for the

punishment of crimes or for political purposes. It means that there has been one case which is believed to be isolated; but, at the same time, it is a warning for the immediate future.

2. Ill-treatment

129. Complaints concerning violations of the right to integrity of person, account for 18.91 per cent of all complaints declared admissible; of these ill-treatment has the highest incidence, at 75.31 per cent. If complaints of excessive use of force, which is a variant of ill-treatment, are included, the incidence increases to 96.3 per cent.

130. The perpetrators, according to the complaints, are for the most part members of the National Police (75.41 per cent). In the case of excessive use of force, the complaints attribute responsibility to members of the National Police, in 88.24 per cent of cases, and to members of the Municipal Police, in 5.88 per cent of cases.

131. In accordance with the trend already noted in the sixth report, most of the complaints have been verified, and it has been found that the violations took place in various circumstances and repeatedly involved abuse of authority and impunity, the latter especially because of the absence of investigation and punishment.

132. It should be noted, however, that active verification has shown, at the same time, what could signal the beginning of a change in attitude on the part of some members of the National Police that, in many cases, is manifested on the part of police officers in a desire not to commit a violation, and on the part of police chiefs, in a willingness to take steps to prevent ill-treatment.

133. These embryonic but encouraging signs have been particularly marked in some regions, such as the Department of San Miguel. Some of the cases of ill-treatment which have been verified are summarized below.

(a) Miguel Angel Molina Rosa (Case No. ORSS/2183/93)

134. The victim was arrested on 23 February 1993 at about 4 p.m., near his home in Colonia Conacaste, by officers of the Soyapango National Police.

135. According to the victim's wife, he was seized by four police officers while talking to a friend. They asked him for identification and threatened to arrest him because he did not have it, whereupon Molina offered to go to his house to fetch it. Molina had not consumed alcohol or committed any punishable act.

136. Since he, no doubt, resisted arrest, the officers began to beat him, kicking him in the stomach and punching him in the chest, as a result of which he fell to the ground; he was then kicked in the neck and in the head. When his wife, who was pregnant, tried to intervene, she, too, was attacked.

137. Human rights observers from ONUSAL visited the victim the day after the incident, at the Soyapango municipal jail (bartolina), where they ascertained that the description of the blows fully coincided with each of the hematomas

exhibited by the detainee. In addition, his shirt was covered with blood from a nosebleed which had occurred as a result of the blows. He also had wounds on both arms, some way above the wrists, because the handcuffs had been too tight.

138. ONUSAL interviewed the commander of Soyapango National Police, Lieutenant Gámez, who promised to investigate the incident, adding, however, that his men had undoubtedly acted in self-defence, because that type of person usually resisted arrest, insinuating that the man who had been beaten might have been a criminal, although he was charged with drunkenness, a petty misdemeanour. However, no one had previously mentioned that he was drunk, even when, in the presence of that officer, one of the policemen who had participated in the arrest was questioned; not only did that policeman deny having beaten the man, he also said that the victim had thrown himself down and had had to be dragged away by the police (although there are no signs of this). Lieutenant Gámez also said that the detainee had no documents and could have escaped from Mariona.

(b) Nelson Hernán Cruz (Case No. ORSS/2230/93)

139. The victim was arrested on 14 February 1993, at about 5.30 p.m., at the entrance to the football pitch of Ciudad Arce (La Libertad) by National Police officers who recognized him as the alleged attacker of a policeman, who had been struck in the face during a brawl which had taken place during the football match.

140. The arrest was made by seven officers - shield Nos. 17146, 19473, 19591, 19592, 19593, 19594 and 19734 - without any resistance on the part of Nelson Hernán Cruz, who was handcuffed and taken by the police officers to the National Police headquarters in Ciudad Arce.

141. There he was thrown to the floor and several of the police officers present proceeded to beat him all over the body with the butts of their weapons and their feet.

142. The detainee was released the following day without any punishment, after spending a night in the National Police jails (bartolinas) "for causing a scene in a public place and showing disrespect for authority".

(c) Julio Morales Martínez (Case No. ORSA 1015/93)

143. On the night of 13 February 1993, the victim, a member of FMLN, was passing by the municipality of Armenia (Department of Sonsonate) on his way back from a party, when he had an argument with Mr. José Alberto Mansilla, a municipal councillor, and member of ARENA; the latter told the Municipal Police to arrest Morales Martínez and to lock him up in the municipal jail, bartolina, and then ordered the police to beat him. He received multiple blows. He was released the following day, after payment of a fine by the FMLN leadership in the district. His party companions took the precaution of having him undergo a medical examination, in which the ill-treatment received was noted.

144. The verification carried out by ONUSAL, through the Santa Ana Regional Office, corroborated the complaint. In this case there was ill-treatment and abuse of authority in the context of expressions of political intolerance.

C. Right to security of person

1. Enforced or involuntary disappearances

145. During the period between June 1992 and January 1993 which was covered by the sixth report, eight complaints which had the hallmarks of possible enforced or involuntary disappearances were admitted. Active verification of these complaints showed that the reported violations had not taken place, and that during that period there had been no cases of enforced disappearances. In reporting this finding, the Human Rights Division indicated that "this is an unmistakable sign of a positive trend in the human rights situation, especially as regards the enforced or involuntary disappearances which caused the international community such great concern in the past".

146. During the months of February, March and April 1993, four complaints of enforced disappearances were declared admissible.

(a) Antonio Hernández Contreras (Case No. ORSA 1025/93)

147. The case was reported to ONUSAL on 23 February 1993. The alleged victim moved from Santa Ana to San Miguel on 1 January 1993 and since then his whereabouts have been unknown. Earlier he had been held in the Santa Ana penitentiary, pending trial in the Third Criminal Court on charges of misappropriation. The Proceedings were dismissed and he was released in November 1992. Up to now it has not been possible to establish his whereabouts. At the same time, active verification shows that there is no information or indication that he has been detained. The complaint also makes no reference to any type of detention. On the basis of the available evidence, the case has been categorized as simple disappearance and not enforced disappearance.

(b) Mario Octavio Sánchez (Case No. ORSM 832/93)

148. On 6 February 1993, the San Miguel Regional Office declared admissible a complaint about the enforced disappearance of Mario Octavio Sánchez, bricklayer, living in the Conchagua municipality, Department of La Unión. The complaint was made by the victim's sister. However, that same day the alleged victim's wife appeared at the San Miguel regional office and said that her husband had been arrested by officers who had left a note in the house which she had been unable to read because she was illiterate. The paper indicated that the arrest had been made by the Commission for the Investigation of Criminal Acts.

149. Officials of the Human Rights Division in San Miguel contacted the Commission for the Investigation of Criminal Acts and were able to determine that the arrest had actually been made under an order from the Seventh Criminal Court of San Salvador, for the crime of fraud, and that Mario Octavio Sánchez was being held at Mariona criminal centre. Because of the nature of the arrest, which took place without regard for the rights of the accused, the case was reclassified as arrest in violation of procedural guarantees.

(c) Manuel Gonzalo Marroquín (Case No. SORC 676/93)

150. At the Chalatenango Subregional Office, on 15 April, Josefina Dina Rivas reported that her son Manuel Gonzalo Marroquín Rivas had disappeared while with

his family at the Tamulasco river, El Tamarindo crossing, Chalatenango municipality. According to the mother's testimony, an unidentified witness had seen the young Gonzalo Marroquín with three armed men before the disappearance. On 28 April the National Civil Police informed ONUSAL that the youth had returned home after an absence of 13 days. ONUSAL observers were able to speak to the parents and to the youth himself who corroborated the information provided by the National Civil Police. The complaint of enforced disappearance was dismissed since no disappearance had taken place. It is important to note the efficient and diligent manner of operation in this case of the National Civil Police, recently deployed in the zone.

(d) Elías Morales Cervellón (Case No. SORC 655/93)

151. Also in Chalatenango, the enforced disappearance of Elías Morales Cervellón was investigated from 10 February. According to the mother's testimony, shots were fired from a blue four-wheel-drive vehicle at her son and other friends. The friends fled and the victim was seized and taken into the attackers' vehicle. The mother does not know who these people were. The San Salvador Regional Office made inquiries at various institutions (National Police, Anti-narcotics Unit, Institute of Forensic Medicine), but none of them was able to give it information concerning the whereabouts of Morales Cervellón. Moreover, no testimony was obtained to support the complaint or substantiate it. The complainant has not returned to the ONUSAL offices. The human rights officials entrusted with the case went to the residence indicated in the complaint to obtain further information, but the complainant does not live there. Despite many inquiries among neighbours, it was impossible to obtain even indirect information about the complainant or the alleged missing person. The neighbours said that they did not know anyone with the family name of Morales Cervellón or with the mother's name.

152. The case was closed because no evidence could be obtained to support the complaint.

153. Thus no enforced disappearances have been verified during the period covered by this report. This means that the trend already noted in the sixth report is continuing, in other words, no enforced disappearances have occurred. This continuity is encouraging and confirms the positive trend in the enjoyment of human rights in this sphere.

2. Abductions

154. The average number of complaints of abductions reported in the sixth report was 3.3 per month. During the period covered in the seventh report, the monthly average was 1.6, which represents a significant decline. This figure should be seen alongside the figure for the total number of complaints, which is fairly low (five during the months of February, March and April). The figures clearly show a progressive decline in the practice of abduction in El Salvador, which had been very common during the armed conflict stage.

155. The complaints have been verified and it is highly significant that some of them show procedures which suggest the existence of irregular groups organized

for that purpose, in which members of the security forces are reputed to participate. That is the case in the abduction of Manuel Eufrasio Lorenzana.

Manuel Eufrasio Lorenzana (Case No. ORSS 2311/93)

156. This case is linked with Case No. ORSS 2324/93, that of Vicente Reyes Correa (see paras. 81-87). Manuel Eufrasio Lorenzana, residing in Colonia El Progreso, No. 7 calle El Coco, Lourdes, Department of La Libertad, was abducted, beaten and threatened with death by various hooded individuals on 23 April 1993.

157. According to the victim, at about 5.30 a.m. on 23 April 1993, four hooded individuals dressed in commando-style black and carrying M-16 rifles and a flashlight appeared at his house and repeatedly shouted his nickname "Pepa". The victim lived there with his mother, his wife and their children. He was forcibly dragged from his bed, blindfolded and thrown violently into the back of a pick-up truck, where his hands were tied with cord. He noticed another grey vehicle with tinted glass windows. On the way to the Entre Ríos canton, he was severely beaten with a blunt instrument, while repeatedly interrogated about his reasons for killing an officer; he replied that he had never been involved with the military or with officers of the National Police. He was then thrown out of the vehicle, and was found by Antonio Arévalo and Nazario Girón, who brought him back to his home.

158. In the place where the victim was left, members of ONUSAL found a white handkerchief which may have been used to blindfold Lorenzana. Neighbours said that at about 6.30 a.m. they had seen some individuals dressed in black and armed with M-16 rifles throw someone from a yellow pick-up truck, which was followed by a grey vehicle with tinted glass in which other persons were travelling. They said that when they went out to see what was happening, one of the individuals signalled to them threateningly to leave the area; they also saw him produce a handgun and threaten to shoot the victim; he then kicked him and went away.

159. Antonio Arévalo, a discharged soldier from the Cara Sucia regiment, said that the perpetrators consisted of about six individuals armed with M-16 rifles and dressed as commandoes, but that he could not see their faces because they were wearing ski masks. He added that the individual who threatened them with the handgun had his face uncovered and that he could have been a well-known lieutenant, although later he retracted that statement. A second witness, Nazario Girón, said that he saw the individuals ill-treat the victim; his account coincided with that of the previous witness. He left the area for fear of being shot.

160. According to the description of the incident, the mode of operation of the perpetrators has much in common with that of the so-called death squads, such as the time and place of the incident, the abduction and transfer of the victim to another location, the clothing of the perpetrators and the use of hoods or ski masks, the fact that the victim was blindfolded and tied with cord, the presence of military or police personnel among the perpetrators, the use of pick-up trucks and vehicles with tinted glass windows, brutal interrogation, etc.

D. Right to liberty

161. Between February and April, 82 complaints were declared admissible, 43 of them relating to arbitrary detentions, 31 to arbitrary detentions for petty misdemeanours (faltas de policía), and 8 to detentions in violation of procedural guarantees. The number of admissible complaints relating to detentions for petty misdemeanours does not, however, reflect the real level of such detentions among violations of the right to liberty of person, since the great majority of these detentions usually go unreported. The fact that an increasing number of complaints relating to detentions for petty misdemeanours have been lodged in the period covered by the present report is an encouraging sign that the population is beginning to reject the idea that detention for petty misdemeanours is something quite ordinary and normal.

162. The persons most often blamed in complaints concerning violations of personal liberty are members of the National Police (71.98 per cent), followed by members of the Municipal Police. It is also revealing that 6.98 per cent of the complaints lay the blame for arbitrary detention on members of the armed forces, since, under the rule of law which obtains in El Salvador, members of the armed forces do not have the administrative power of detention.

163. The Human Rights Division has been according high priority to the problem of arbitrary detention for petty misdemeanours, since this is a widespread and systematic practice. To help solve this problem, the Human Rights Division has set up a contact group with the National Police to assess the results of the active verification carried out in this area and to find solutions to existing problems. Throughout this process ONUSAL has enjoyed the cooperation of the Director-General of Police. This coordinated exercise has led to the elaboration of guidelines for the implementation of the Police Act, designed to guide police conduct while the necessary legal amendments are being carried out to bring the legal provisions covering petty misdemeanours into line with the provisions of the Constitution.

164. To this end, the Office of the Director-General of Police has appointed a Commission, made up of judges trying petty misdemeanours, to elaborate a draft directive at the national level for the implementation of Decree No. 457, "Act governing the procedure for administrative detention or the imposition of administrative fines", with a view to overcoming ignorance among such judges and among police captains of the existence of this legal provision. In addition, the Commission has studied the issues of jurisdiction and the juridical nature of offences currently regarded as petty misdemeanours, the procedural rules, the rights of detainees, the system of penalties and other issues identified in the study carried out by the Human Rights Division, the body which advised the Commission.

165. On the basis of this work, the Office of the Director-General of Police has approved "Guidelines for the implementation of the Police Act", containing legal provisions which are to be implemented on an interim basis while the necessary legislative changes are being made to bring the approach to the problem into line with constitutional and international law. Similarly, the Guidelines' provisions shall be implemented on an interim basis until the adoption of the Act granting justices of the peace exclusive jurisdiction over proceedings involving petty misdemeanours. An endeavour is therefore being made to solve

the problem within a pragmatic strategy which distinguishes between short and medium-term actions.

166. In their operative part, the Guidelines state that, in the city of San Salvador and in the country's departmental capitals, when the National Police is prosecuting offences against the Police Act, the judge responsible for trying petty misdemeanours shall be the authority competent to take cognizance of such offences and to conduct the corresponding proceedings.

167. They further state that these judges must apply the Act governing the procedure for administrative detention or the imposition of administrative fines, Decree No. 457 of 1 March 1990, to all offences specified in the current Police Act that have not been incorporated into the new text of the Penal Code (such as drunk and disorderly conduct), and they guarantee a suspect's right to a hearing and to legal counsel.

168. The Guidelines contain a specific list of offences currently regarded as petty misdemeanours, expressly stating that, under no circumstances, may persons under 18 years of age be held in jail for petty misdemeanours. They also establish criteria for detention and for safeguarding the rights of detainees, establish standards for the implementation of the remedies of application for reconsideration, judicial review of the facts and review of leave to appeal, and also set aside the table of fines for offenders, which was being applied without legal basis.

169. Furthermore, they establish that, "for constitutional reasons (art. 14), imprisonment and fines may not be applied simultaneously. Where a fine is imposed, the person under arrest must be guaranteed the right to pay such fine on the spot, whereupon he must be set free. In the case of imprisonment, persons being detained must be allowed to pay the respective fine in commutation of such imprisonment."

170. Finally, they establish that each judge or, where applicable, the Municipal Court shall keep a register of detainees and inventory of fines, which will enable the Office of the Director-General of Police to compile, at the national level, an essential consolidated register of persons detained for petty misdemeanours and inventory of fines paid.

171. Since March 1993, the Guidelines have started to be implemented in all the police premises of El Salvador and their implementation is expected to lead to a marked reduction in violations of the right to liberty for petty misdemeanours. To this end, the Human Rights Division organized a basic course in human rights, geared towards judges who try such misdemeanours and police captains, in the last week of March, during which participants discussed the various aspects of the Guidelines and their practical implementation.

172. The will expressed by the National Police to find an interim solution to the problem of arbitrary detentions for petty misdemeanours, while the substantive legislative revisions are being ratified, represents a commendable demonstration of its concern.

That said, there are still frequent cases of arbitrary detentions involving abuse of authority:

(a) Case No. ORSS/2089/93

173. José Roberto Portal Orellana was arrested on 29 January 1993 near the suburb of San Ramón in Quezaltepeque, by officers of the National Police of that area, for "selling coffee of suspicious provenance", when he was transporting the said product by lorry for sale, and the vehicle, one set of scales and 16 sacks of coffee were confiscated.

174. The police, with the intention of releasing the detainee that same day, asked his wife to pay an amount of 15,000 colones, but she would not do so. On the day following the arrest, José Roberto Portal was transferred to the Executive Unit to Combat Drug Trafficking, where the offence was classified as "receiving stolen goods", without any documentation being sought from the Quezaltepeque National Police or any evidence being provided by the detectives who had made the arrest. Subsequently José Roberto Portal was brought before the Second Magistrates' Court of the municipality in question, which, after some time, finally referred the case to Quezaltepeque Criminal Court, without taking any action.

175. The detainee's mother submitted to the said court the title deeds of the land on which the coffee was grown, to prove that the produce was of legal provenance, but the judge did not accept the evidence, stating that in this case, her own judgement would prevail.

(b) Case No. ORSS/2279/93

176. At about 9.45 a.m. on 10 April 1993, Francisco López Alas was travelling in his public service vehicle along Avenida Juan Pablo II in San Salvador, in the company of his wife, Ana Silvia Ayala and two friends, with a music system playing at loud volume, when three officers of the National Police signalled to them to stop.

177. When the vehicle was stationary, one officer (badge No. 15211) went up to the driver of the vehicle and, in return for not confiscating the sound equipment, demanded 300 colones which Francisco López refused to give him. At that moment, Ana Silvia Ayala stepped in, telling the police that their duty was to protect people and not to rob them.

178. Thereupon, the officer decided to have the vehicle taken to the Traffic Department, where it was impounded, and he arrested the woman for showing "lack of respect for authority". The victim was taken to the cells at National Police Headquarters, where she remained until the following day, when she was set free after paying a fine of 35 colones.

E. Right to freedom of association and effective enjoyment of trade union rights

179. The issue of the exercise of the right to freedom of association is bound to have increasing relevance in El Salvador, both in the context of the protection and promotion of human rights, and in the political and economic life of the country.

180. The peace agreements in El Salvador are bringing about a series of substantial changes not only in traditional patterns of political conduct, but also in social attitudes and the assimilation of democratic values, which, in the past, were a part of relations between the State and society and between capital and labour. This process of the gradual adaptation of the various social forces to the growth of democracy is bound to find expression in legitimate claims by workers concerning their rights and the enjoyment of rights consistent with international standards, which were denied in the past.

181. As the rule of law becomes established, labour may be expected to voice its demands with increasing vigour, particularly with regard to basic aspects of democratic trade union rights. Consequently, at the current stage, labour disputes are characterized more by demands for recognition of basic rights, such as those relating to trade union freedom, than by wage claims.

182. At the same time, as a complementary process, the peace agreements and the establishment of democratic institutions have created possibilities - practically non-existent before - for dialogue between management and labour and for the promotion of social and economic consultation.

183. This double dynamic has made it possible, within the framework of the Forum for Economic and Social Consultation, for labour and management, in conjunction with the State, to approve in February 1993 a transitional Agreement of Principles and Commitments with a view to the negotiation of an agreement on social peace and economic development.

184. The Agreement sets a precise timetable for the implementation of a joint proposal designed to lead to the ratification of the principal conventions of the International Labour Organisation (ILO) to which El Salvador has not yet acceded. When the Forum met for this purpose, the discrepancies were expressed in non-negotiable terms. Where management is concerned, the conventions likely to be ratified are No. 171, on night work of women and young persons; No. 88, on the organization of the employment service; No. 99, on wage fixing in agriculture; and No. 144, on tripartite consultation to promote the implementation of international labour standards. Management representatives deemed the following conventions unsuitable for ratification: No. 158, on the termination of employment at the initiative of the employer, since it places restrictions on management; No. 156, on workers with family responsibilities, for the reason that companies would be unable to comply with it in reality; No. 135, on protection and facilities to be afforded to workers' representatives in the undertaking, as it grants excessive protection measures; and No. 103, on maternity protection, as it places an excessive burden on the State.

185. Finally, management opposed ratification of the following conventions on the grounds that it considered them unconstitutional: No. 87, on freedom of association and protection of the right to organize, since it does not exclude aliens from the boards of trade unions and it does not withhold the right to collective bargaining from public employees; Nos. 98, 154 and 151, on the right of state employees to association, collective bargaining and organization, for the same reasons as in the previous case; and No. 96, on fee-charging employment agencies, maintaining that it restricts the freedom of organization.

186. For its part, the Government identified only No. 151 as acceptable. It deemed as unsuitable No. 156, since it could be counterproductive by making it difficult, in practice, for workers with family responsibilities to hold jobs; No. 99, since the obligation to consult with the labour and management sectors would hold up the work of the Minimum Wages Board; No. 144, since it would result in administrative delays and reduce efficiency; No. 88; No. 96, since it views labour as merchandise; and No. 735, since it promotes the irremovability of trade unionists.

187. At the same time, and for the same reasons put forward by management, the Government deemed Conventions Nos. 87, 98, 103, 151 and 154 to be unconstitutional.

188. In labour's view, there was nothing unconstitutional about them, since the conventions in question were sufficiently wide in scope to ensure no conflict with the Constitution.

189. This discussion has reached an impasse in the Forum for Economic and Social Consultation, as each of the parties has adopted a unilateral position. This, in turn, has impeded progress on other items on the agenda, such as those relating to recognition of the legal personality of trade unions and associations and the suppression of discrimination against workers who belong to trade unions.

190. The breakdown of dialogue within the Forum is a reflection, at the current time, of prevailing rigid positions; this rigidity will have to change very soon if essential agreements are to be reached, otherwise the process of social consultation and compliance with the peace agreements in this area could be seriously jeopardized. The debate about the unconstitutionality of the conventions has been more legal and political in nature. In any event, it is essential to return to the path of dialogue and consultation which made possible the signing of the Agreement of Principles and Commitments, as the best way of finding a solution acceptable to all parties.

191. If the political will of the parties were to be manifested in progress towards the effective recognition of trade union freedom and respect for international labour law, ratification of the conventions would cease to be a substantive issue and would become instead a purely procedural matter.

192. In the context of the national debate on the ratification of the ILO conventions, it should be noted that both the situation of trade union freedom and the effective enjoyment of trade union rights have been very restricted, owing to the inadequate protection currently provided for the exercise of trade union freedoms and the freedom of association.

193. Thus, the competent authority has refused to register the union section of La Paz Department and the Sindicato de la Industria Portuaria de El Salvador. The cases of the union section of the Empresa Blokitubos (case No. ORSS/1608/92), the union section of the Fondo de Financiamiento y Garantía para la Pequeña Empresa, and the Sindicato de Trabajadores Bancarios e Instituciones Financieras (case No. ORSS/1986/92) have had a similar outcome. In this same context, the Ministry of Labour has refused to recognize the legal

personality of the Sindicato de Industrias de Productos Alimenticios, Lácteos y Actividades Conexas (SIPALAC) (case No. ORSS/1951/92).

194. The tendency, already noted in the sixth report, to impede or refuse recognition of communities continues and shows no significant positive development. The following case is representative:

La Ponderosa community (Case No. ORSA/1041/93)

195. On 7 March 1993, the La Ponderosa community, falling under the jurisdiction of Sonzacate, in the Deparment of Sonsonate, held a general meeting which was attended by representatives of the National Assembly of the Centre for the Study of the Implementation of the Law (CESPAN), the Asociación Nacional de Indígenas Salvadoreños (ANIS), FMLN and an observer from the ONUSAL Santa Ana Regional Office. The meeting was interrupted when two inebriated individuals bearing arms burst in and threatened those present.

196. This incident led to various judicial proceedings, conducted in the Sonzacate Magistrates' Court and in the Sonzacate Second Criminal Court since the mayor of Sonzacate refused to recognize the legal personality of the corporation arguing that it was a front for FMLN.

197. ONUSAL observers verified the legal procedures relating to this case; in addition, they held meetings with the mayors of Sonsonate and Sonzacate, as well as with members of the community. There are no legal provisions justifying the decision of the mayor of Sonzacate to refuse legal recognition to the community.

F. Right to due process of law

198. One hundred and fifteen complaints concerning violations of due process of law have been declared admissible, constituting 26.81 per cent of the total number of complaints declared admissible during the period under review; 62.46 per cent of the complaints identify the judiciary as the responsible body. The main categories of violated rights are those pertaining to the right to be tried by a competent tribunal within a reasonable period of time, the legal obligation of the State to prosecute offences, the right to legal counsel and the right not to be subjected to coercion.

199. The ONUSAL Human Rights Division has conducted a study of violations of due process of law stemming from the judges' handling of proceedings, based on all those complaints declared admissible between the date on which ONUSAL commenced its work in El Salvador and March 1993.

200. This study has been brought to the attention of the Supreme Court of Justice and the Ministry of Justice, with the idea that it could provide guidelines for the Supreme Court of Justice of El Salvador in the task of monitoring the performance of members of the judiciary and for the planned assessment of magistrates and judges which is shortly to be carried out by the National Council of the Judiciary.

201. Of the 98 violations reported and registered, 2/ it should be noted that the majority (69.39 per cent) concern the right to be tried by a competent

tribunal, as evidenced by failure to carry out important procedures in cases of violent death. Cases include: failure to perform a proper autopsy (24.49 per cent), 3/ failure to conduct judicial inspections and forensic examinations (16.36 per cent) and refusal to carry out investigations in certain cases (14.29 per cent).

202. Another large number of violations concern the right to be tried within a reasonable period of time (18.37 per cent), the most serious of these being cases of procedural delay caused by pre-trial detention for periods in excess of the time-limits established by law for the conclusion of trials (13.27 per cent), involving so-called unconvicted prisoners; followed by cases of procedural delay resulting in impunity of the alleged perpetrators (4.08 per cent).

203. Violations of the right to be tried by an independent and impartial tribunal (8.16 per cent of complaints) are divided between allegations of bribery (bribery involving payments and influence peddling) and cases of possible bribery. No complaints were received involving large-scale bribery.

204. Cases of failure to observe the rules specifying that statements obtained under duress are not valid are represented by complaints of extrajudicial confessions obtained through coercion (4.08 per cent).

205. In view of the nature of the information received concerning performance of the judges, the numerous violations of the right to legal counsel have not been included.

		Percentage
Failure to observe the rules specifying that statements obtained under duress are not valid		
Extrajudicial confession under coercion	04	4.08
Violation of the right to be tried by a competent tribunal		
Lack of competence	01	1.02
Improper application of the law	02	2.04
Illegal termination of criminal proceedings	02	2.04
Failure to conduct judicial inspection, forensic examination	16	16.33
Failure to perform proper autopsy	24	24.49
Failure to carry out other important investigations	02	2.04
Refusal to conduct an investigation in certain cases	14	14.29
Passive acceptance of resistance to mandates or lack of cooperation	06	6.12
Failure to monitor arrest warrants	01	1.02
Violation of the right to be tried within a reasonable period of time		
Delays and prolongation of pre-trial detention	13	13.27
Delays resulting in impunity	04	4.08
Absence from place of work of judicial officials	01	1.02
Violation of the right to be tried by an independent and impartial tribunal		
Bribery	03	3.06
Possible bribery	05	5.10
Total violations	98	100

Failure to observe the rules which specify that statements obtained under duress are not valid

1. Extrajudicial confession under coercion

206. There are a number of cases in which extrajudicial confession was considered the main incriminating evidence despite the fact that the accused claimed to have been forced to sign the confession through the application of various means of coercion: case No. ORSA/1119/92, case No. SS/235/91, case No. SS/391/91 and case No. SS/1369/92. These cases involve violations of legal provisions currently in force.

Violation of the right to be tried by a competent tribunal

1. Lack of competence

207. In one instance a justice of the peace assumed functional competence in the case of an offence of usurpation that he was not competent to try (case No. SORU/381).

2. Improper application of the law

208. Instances of improper application of the law include annulment of proceedings when the proper course of action was referred to a higher court (case No. SORC/632), erroneous order for the arrest of the wrong person (case No. ORSM/595).

3. Illegal termination of criminal proceedings

209. Instances of illegal termination of criminal proceedings by means not provided for under the legislation currently in force include: conciliation and financial settlement (case No. SORC/582), settlement (case No. SORC/560).

4. Failure to conduct official inspection, forensic examination or proper autopsy

4 (a) Failure to conduct official inspection, forensic examination

210. In a large number of cases there was no visual inspection or forensic examination by judicial officials in cases of violent death.

4 (b) Failure to perform proper autopsy

211. The highest percentage of lapses in procedure involved the failure to perform a proper autopsy in cases of violent death.

5. Failure to carry out other important investigations

212. Other violations have been reported and recorded involving failure to carry out important procedures, such as ballistics analysis or the taking of important testimony (case No. ORSM/815), as well as failure to conduct investigations before the issuance of an arrest warrant (case No. ORSA/937/92).

6. Refusal to conduct an investigation in certain cases

213. Violations involving refusal by the judicial authorities to conduct a criminal investigation in various cases have been linked to the status of the accused: members of the security forces (case No. ORSS/109/91), member of the armed forces and reputed child of a deputy (case No. SORU/377), mayor (case No. SORU/379), member of the National Police (case No. ORSV/793), prominent individual (case No. ORSS/1381/92). A lack of resources has also been claimed (case No. ORSV/709/92). Other complaints claim a serious denial of justice (case No. ORSM/710).

214. There are also various cases of refusal to issue arrest warrants notwithstanding the existence of sufficient evidence (case No. ORSV/632 and case No. ORSV/665).

215. Denial of justice has been claimed on the basis of improper procedure during investigations (case No. SS/1008/92), in that the alleged events did not constitute an offence (case No. ORSA/807/92) or on other grounds not explicitly stated (case No. ORSA/939/92).

7. Passive acceptance of resistance to mandates or lack of cooperation by persons or institutions

216. These cases involve investigations in which the judicial authorities passively accepted outside resistance to their mandates or a lack of cooperation by persons or institutions bound to afford such cooperation.

217. The specific reasons vary: relationship of the victim to the civil defence (case No. SS/650/91), members of the armed forces (case No. ORSA/981/93), death in a penal establishment (case No. ORSS/1341/92), opposition to the investigation (case No. ORSS/1872/92), failure to communicate with the judicial authority (case No. ORSS/1195/92 and case No. ORSS/1718/92).

8. Failure to monitor issuance of arrest warrants

218. One case has arisen in which the infringement involved the absence of follow-up and monitoring regarding the police authorities with respect to arrest warrants issued by judicial organs (case No. SORC/626).

Violation of the right to be tried within a reasonable period of time

1. Delays in the administration of justice

1 (a) Delays in proceedings and/or prolongation of pre-trial detention

219. Cases where there has been a delay in the timely administration of justice constitutes another major group of violations. This is a factor which contributes to the prolongation of pre-trial detention of individuals for periods longer than the time-frame laid down for proceedings. It should be noted that ONUSAL has previously made recommendations concerning the problem of unconvicted prisoners.

1 (b) Delays in proceedings resulting in impunity

220. Instances of delays in proceedings resulting in impunity for the alleged perpetrators have been linked, in particular, to cases where there were defects in arrest warrants.

1 (c) Absence from their place of work of judicial officials during the working day

221. In one case it was ascertained that judicial officials were absent during working hours (case No. SORC/604).

Violation of the right to be tried by an independent and impartial tribunal

1. Bribery

222. Reports of small-scale bribery involving payments in exchange for specific acts include revocation of arrest (case No. ORSM/-) and the release of a detainee (case No. SORU/595 and case No. SS/1531/92). There is no record of complaints of large-scale bribery involving payments. Case No. ORSM/478 relates to an alleged case of influence peddling.

2. Possible bribery

223. This heading covers all cases where a complaint does not explicitly state that bribery was involved - though considering it possible or probable - and does not give any indication of the type or scale of the possible bribery.

224. The results of this study offer a general overview of the various complaints of violation of due process of law, responsibility for which does not necessarily lie with individual judges since such instances form part of the structural problem of the administration of justice which the peace agreements identified as an area the urgent transformation of which was a sine qua non for

the establishment of a modern constitutional State. In this sense the provisions of the peace agreements and the constitutional reforms provided the basis for a reform of the judicial system which is still in full swing.

G. Right to freedom of expression

225. Freedom of expression and information is a fundamental human right involving the right to gather, transmit and publish information in any place and without any restriction, and as such is an essential factor in the rule of law. As indicated in the sixth report, enjoyment of this right in El Salvador accords with international standards and is guaranteed by the State.

H. Political rights and right to identity documents

1. Political rights

226. Political rights are guaranteed by the Constitution and by the secondary legal order. With the legalization of the Frente Farabundo Martí para la Liberación Nacional (FMLN) as a political party in El Salvador, there has been a consolidation of democracy in that options no longer exist outside the democratic legal framework, which has been broadened to represent all the political forces within the country.

227. Over the period there have been indications, particular in the interior of the country, of some intolerance of FMLN political activities, but these have not developed into serious situations and have been resolved within the context of the democratic legal framework.

2. Right to identity documents

228. Since the second report of the Human Rights Division to the Secretary-General, the Mission has focused on the situation regarding the identity documents of a large number of Salvadorians who, as a result of the conflict, are undocumented. This focus reflects the San José Agreement (paras. 7 and 8) and, in particular, the consequences for the peace process of this situation. The enjoyment of economic and political rights by an entire sector of the population is dependent on finding an appropriate solution to this problem.

229. Important progress has been made since the Mission established itself in El Salvador. Legislation has been adopted to allow the replacement of the books and certificates in the Civil Registry, including a Transitional Act Establishing the Civil Status of Undocumented Persons. Certain specific groups have obtained basic identity documents (birth certificates and identity cards), including former FMLN members, now demobilized, and some communities of repatriated individuals. Nevertheless the problem of documenting displaced persons living within the country and those living in the former conflict zones remains.

230. Over the past year ONUSAL has been cooperating with initiatives by the Salvadorian Institute for Municipal Development (ISDEM), the Office of the United Nations High Commissioner for Refugees (UNHCR), the United Nations Development Programme (UNDP) and the Agency for International Development (AID), supporting implementation and expansion of the PRODOC (identity documents programme) project in particular. Significant progress has been made with PRODOC. Among other developments 2,150 Civil Registry books (of a total of 3,000) have been handed over as part of the replacement exercise by agreement with the Supreme Electoral Tribunal and application of Decree No. 204 (which amends Decree No. 577 on the expansion and streamlining of procedures to replace Civil Registry books). The handing over of books involves the replacement of 650,000 birth certificates in various mayors' offices.

231. Some 160,000 basic documents, including birth certificates, personal identity cards and minor's identity cards, have been issued.

232. Further, legal assistance has been provided to assist in the proper implementation of Decrees No. 204 and No. 205 in 150 municipalities and in some 120 municipalities in areas most affected by the conflict.

233. Notwithstanding these constructive developments, the work has only just begun, since these efforts have yet to be directed specifically at internally displaced persons - who account for by far the largest group of undocumented persons. The situation appears much more compelling if it is borne in mind that these basic documents are a prerequisite for the inclusion of citizens in the electoral roll and subsequent issuance of a voter's card.

234. The Human Rights Division has cooperated in a number of one-day campaigns on identity documents, with the participation of various national and international agencies.

I. The situation of violence and the enjoyment of human rights

235. There is a perception among the people of El Salvador of a tremendous increase in ordinary violence.

236. With the end of the conflict and the advent of peace the people had legitimate aspirations for greater security. This is not, however, true at present, since factors carrying over from the conflict have conspired to promote a perception of a lack of public security. The problems of incorporating demobilized combatants into civilian life, the practice of using heavy-calibre weapons and even military weapons for personal protection and that of private entities, and the widespread availability of military weapons, including grenades, among the most diverse segments of the population have contributed to the feeling of a lack of security.

237. Nevertheless it is clear from a statistical analysis that there has been no inordinate increase in violence. There is, rather, a trend towards stabilization at a high incidence in line with the level of crime in the country in recent years. There has, however, been a qualitative increase in the impact of violence as reflected in random deaths, there being a disproportionate relationship between the general incidence of crime and the level of fatalities,

this being attributable both to the use of more powerful weapons and to a trend towards fatalities for relatively trivial causes or reasons.

238. With the aim of assessing the impact of acts of violence reported in the press, the Human Rights Division has prepared statistics relating to violence reported by the media, that is, acts of violence of which the public becomes aware, essentially, through the press.

239. During the months of February, March and April, a total of 350 criminal acts against the life or person of the victims were recorded.

240. Of these criminal acts, 41.19 per cent involved homicide or attempted homicide; 26.2 per cent assault and homicide; 20.87 per cent assault and battery; 8.83 per cent physical injury; and 2.81 per cent kidnapping or kidnapping and murder.

241. Of these offences, 55.69 per cent were committed with firearms, in many instances heavy-calibre weapons (M-16s and AK-47s); 23.04 per cent with knives and similar weapons; 4.47 per cent with grenades and explosives; and 4.4 per cent involved beatings and strangulations; in 12.6 per cent of cases, reports did not specify what weapon or force was used.

242. Ordinary acts of violence, on the other hand, were largely concentrated in San Salvador (42.49 per cent) and Santa Ana (31.55 per cent). These indicators demonstrate that ordinary violence is not a country-wide phenomenon, but is concentrated in the capital and in the nearest urban centre.

243. Systematic evaluation of criminal acts suggests that violence in El Salvador might initially be divided into two categories: (a) ordinary crime having deadly results, such as homicide and assault and battery. This is generally of an indiscriminate nature and may involve crimes by individuals or by organized gangs; and (b) selective non-political violence, which includes the settling of scores, private justice, personal revenge and other causes. This is selective in nature and usually takes the form of murders.

244. The limitations and problems which have so far characterized the programmes to collect military weapons from the civilian population undoubtedly necessitate priority analysis with a view to making the necessary adjustments and changes to improve their effectiveness. Ineffectual investigation and punishment of crime also generates a lack of confidence in the public security forces among the general population. A survey carried out by the Instituto Universitario de Opinion Publica (IUDOP) in February showed that 76 per cent of crime victims did not notify the police. With regard to the level of security - or lack thereof - 73.2 per cent of the population viewed crime in its various manifestations as the main problem facing the country. Some 88.6 per cent of the population thought that crime had increased and 68.1 per cent were afraid of being assaulted in their own homes.

245. In response to this situation, the Government has formulated and implemented an emergency anti-crime plan. The plan was announced on 18 February 1993 by the Minister for the Office of the President, Oscar Santamaría. Basically it involves an effort to make intensive use of the logistical, institutional and human resources available to the State to fight

crime. In this connection a special commission has been established, coordinated by the Minister for the Office of the President, comprising the new National Civil Police, the current national police, the Office of the Attorney-General of the Republic, the Supreme Court of Justice and the Ministry of Justice.

246. The plan has made it possible to some extent to improve the effectiveness of the State in combating crime, but has not had any practical impact on one aspect which is generally regarded as central to the level of violence attending ordinary crime in El Salvador, namely, the widespread and random possession of military weapons by the broadest sectors of the population.

247. Whether the emergency anti-crime plan succeeds in raising the effectiveness of law-enforcement efforts to the required level will largely depend on the ability of the State to collect, efficiently and quickly, the arms held by the civilian population, private entities and bodyguards, all of whom generally carry military weapons. A concomitant factor which could increase the effectiveness of measures to combat ordinary crime is improved control at military establishments over stocks of military weapons, including grenades and explosives. Reports of the theft or removal of military weapons from military depots are not unusual.

248. To the extent that the public continues to perceive the incidence of crime as high, there will always be the possibility that selective political use may be made of criminal gangs, and there will also be latent pressure to combat crime through machinery not provided for under the Constitution, a situation which might impede the demilitarization of Salvadorian society and undermine the effectiveness of democratic institutions as the most suitable means of providing the people with the security for which they long. The effective exercise of human rights requires a social order which is able to protect them and ensure their enjoyment. Destabilization of the social order might generate forms of suppression of crime which would be incompatible with the effective exercise of human rights.

IV. ACTIVE VERIFICATION OF OTHER COMMITMENTS ESTABLISHED IN THE PEACE AGREEMENTS AND HAVING HUMAN RIGHTS AND INSTITUTIONAL SUPPORT COMPONENTS

A. Functioning of the judiciary and the administration of justice

249. Notwithstanding the constitutional reforms and important developments in terms of secondary legislation, judicial practice in El Salvador remains unsatisfactory. In this regard the ONUSAL Human Rights Division reiterates the views expressed in its sixth report. In these circumstances, judicial reform is an objective shared by the State, the community and the population as a whole, and involves action in the legislative sphere as well as in terms of judicial practice.

1. Judicial reform promoted by the Ministry of Justice

250. The Ministry of Justice, in consonance with the provisions of the peace agreements, has, in the context of judicial reform, been promoting a national legal reform plan comprising substantive reforms of both a partial and general nature. Under the plan the partial reforms are designed to restore as a matter of urgency the balance between the capacity of the State to control the problem of crime and to develop a broad constitutional guarantees, as well as to strengthen the credibility of the judicial system, the lack of which poses a serious threat to the process of democratization.

251. The comprehensive reforms, for their part, are designed to provide the country's legal system with functional coherence in terms of constitutional provisions, and to bring the system up to date while making it more human.

252. The bills drafted by the Ministry of Justice with a view to implementing the partial reforms relate to the following:

(a) The new Public Defenders Act: introduces amendments and reforms into the Penal Code, the Code of Criminal Procedure and the Act organizing the Public Prosecutor's Office. The purpose of these reforms is to guarantee the right to legal counsel, to strengthen the presumption of innocence and to uphold the principles of due process by the institution of the public defender;

(b) Abolition of automatic reviews: the Human Rights Division asserted on several occasions that the practice of holding automatic reviews violated due process, in that it infringed on the autonomy of, and caused delays in, the administration of justice. Under that system, all final decisions taken by courts of first instance, whether convictions, acquittals or dismissals, in cases involving offences for which the maximum sentence exceeded three years of prison, had to be reviewed by the courts of second instance, even if prosecutor, counsel for the defence and the defendant himself all agreed with the finding of the lower court. This bill was approved by the Legislative Assembly in Decree No. 510 of 22 April 1993, and represents, in the legislative arena, a significant advance for the guarantee of due process;

(c) Contrary to the provisions of the constitution, the Code of Criminal Procedure established the presumption of guilt in such crimes as theft, robbery, forgery, kidnapping, extortion, terrorism, etc. Reforms to that code have now been approved, eliminating the legal presumption of guilt on the grounds that it violates the principle of innocence;

(d) Elimination of extrajudicial confession: the proposed bill, in keeping with constitutional law, disallows the use of extrajudicial confession as evidence. Although the enactment of the Public Defenders Act tempered the practice of extrajudicial confession, by permitting a defence lawyer to attend and monitor such proceedings, extrajudicial confession still needs to be explicitly prohibited so as to void its probative value, on the principle that a confession can only be made before a judge and in the presence of a lawyer. This bill has been formulated for the express purpose of eliminating the practice of extrajudicial confession;

(e) Shortening the duration of administrative detention: this proposed bill improves on the provision contained in article 13, paragraph 2, of the Constitution, which states that: "administrative detention shall not exceed 72 hours, within which time the detainee must be handed over to the competent court, together with the results of whatever proceedings may have been taken. This proposed bill posits that once extrajudicial confessions and the presumption of guilt have been abolished, and when the right to legal counsel is guaranteed, there is no reason whatsoever for holding the accused in administrative detention even for the full 72 hours allowed under the Constitution. It is therefore proposed that the accused should be remitted to the proper judicial authorities within 24 hours;

(f) Rules for detention by police authority: the purpose of this proposed bill, which incorporates the Code of Conduct for Law Enforcement Officials approved by the United Nations General Assembly concerning the rights of the accused and the duties and powers of auxiliary organs, is to avert the excess use of physical force during arrests and stresses the importance of preserving the life and physical integrity of the arrestee;

(g) Regulations governing investigations and searches: the purpose of this proposed bill is to provide safeguards against arbitrary searches of persons and their homes as well as against arbitrary investigations, by requiring the police to obtain a warrant prior to conducting a search, stating the reasons therefor, except in those situations in which it is generally acknowledged, under comparative jurisprudence, that necessity dictates that the police be allowed to proceed directly. Failure to observe these fundamental safeguards, if it resulted in injury to the accused, would invalidate the proceedings;

(h) Reforms of pre-trial detention and releases on bail: also based on the constitutional principle of the presumption of innocence, this bill aims to substantially modify the criminal procedure system, by establishing release on bail as the general practice, and reserving pre-trial detention for exceptional cases (where there is a danger of the defendant escaping or of obstruction of the proceedings).

253. Release will thus be viewed as the "right" of the accused, rather than as a special "privilege", and more attention will be paid to the judicial evaluation of specific cases than to legal categories pre-set by legislation.

254. This bill will also fully regulate the precautionary measures instituted to replace the practice of pre-trial detention, the various kinds of bail, as well as the time-limits for detention of the accused during pre-trial proceedings and trial.

255. These partial reforms will be supplemented by certain other proposed bills concerning: the separation of the duties of examining magistrates and trial judges; measures to ensure observance of time-limits for proceedings, the introduction of the exclusion rule; reforms to the Code of Military Justice; the introduction of oral proceedings, as well as of other procedural rules governing public jury trials; and the transfer of minor offences from police jurisdiction to the magistrates' courts.

256. The proposed new code of criminal procedure and the new penal code reflect more comprehensive reforms. They conform, in broad terms, to modern principles of criminal law which seek to provide fundamental legal guarantees, and include regulations of special significance for the protection of human rights, such as the criminalization of the practices of torture and enforced disappearance.

257. The judicial reform being proposed by the Ministry of Justice, as reflected in the aforesaid legislative innovations and changes, incorporates the terms set out in the peace agreements, and is consistent with the concerns expressed by the Human Rights Division as well as with the recent trend in the national juridical community towards the establishment of fundamental legal guarantees, subtle differences in interpretation and alternative approaches notwithstanding. It should also be noted that the Ministry of Justice, in seeking to establish consensus prior to presenting these proposed bills to the Legislative Assembly for approval, has been utilizing a methodology that involves an extensive national consultation.

258. However, it should be pointed out that given the special characteristics that are often observed in the administration of justice in developing countries, among them the existence of a discrepancy between judicial principle and practice, it is imperative that this signal effort to promote and protect human rights be properly and forcefully implemented by the judiciary.

2. The remedy of habeas corpus

(a) Habeas corpus in Salvadorian positive law

259. The Constitution now in force, which dates from 1983, establishes that anyone whose freedom is unlawfully restricted by any authority or individual shall have the right to the remedy of habeas corpus. Article 247, paragraph 2, dealing with functional competence, states that applications for the remedy of habeas corpus may be filed in the Constitutional Chamber of the Supreme Court of Justice or in the courts of second instance which are outside the capital. Decisions by the latter denying the request for release of the person in whose behalf the application is filed may be reviewed, at the request of the interested party, by the Constitutional Chamber of the Supreme Court of Justice. This right of appeal represents an innovation in Salvadorian law. Article 174, paragraph 1, of the Constitution also addresses the issue of functional competence stating that: the Supreme Court of Justice shall have a Constitutional Chamber, which shall hear and decide on actions of unconstitutionality of laws, decrees and regulations, proceedings relating to amparo and habeas corpus.

260. As stipulated in the Constitution, in agreement with the Constitutional Procedures Act now in force, the remedy of habeas corpus may be sought when the violation of constitutional rights involves the unlawful restriction of individual liberty, and may be lodged against any authority or individual committing the restriction (art. 4 of that Act, see also art. 40). Although the Act does not expressly cite any source for the guarantee against ill-treatment, article 57 refers to "any detainee, prisoner or person whose property is to be auctioned (rematado) and who is subject to longer detention or greater restrictions than those permitted by law, or held in solitary confinement ...".

261. The application may be filed by various means (arts. 41, 42) but the fact that it cannot be filed orally clearly constitutes a limitation. The court receiving the request delegates the execution of the writ of habeas corpus to an authority or person whom the court considers reliable, in the place where the writ is to be executed, or within a six-league radius thereof. Such persons, called executing officers, must be able to read and write, be at least 21 years old and be in possession of all their rights as a citizen (art. 43, para. 1, of the Act). The writ of habeas corpus requires that the person in respect of whom it has been issued appear before the executing officer and that the authority or individual in whose custody he is produce the proceedings or state why he is held (art. 44 of the Act). The executing officer, accompanied by the secretary, must notify the responsible person or authority of the writ within no more than 24 hours (art. 45 of the Act) and minutes shall be drawn up of the meeting at which the person in respect of whom the remedy has been filed appears and the file produced or reasons for detention stated (art. 46). The executing officer may decide to order that the individual be released or that he remain in detention, depending on the case (art. 47 and ff.). Within 15 days of the notification of the writ the executing officer must complete the task and refer the case back to the court with a certification of what has been decided and a report on his actions (arts. 66, 69, 70 of the Act). The Chamber or the Court must make a determination within five days of receipt of this report, unless it deems it necessary to request the file, in which case it shall make a determination within five days of receiving the file (art. 71).

262. The results of active verification by ONUSAL show that the rules currently in force do not safeguard the principles of swiftness and timeliness of the habeas corpus procedure and that the rules themselves, limited though they are, are not observed. In a significant number of cases the executing officer refers the matter back to the Court for a determination once more than 30 days have elapsed, by which time the violation has either ceased or become irreparable.

263. Although the remedy of habeas corpus is considered to be a swift and timely mechanism for safeguarding the liberty and integrity of the person, the way in which it is regulated in El Salvador's legal order prevents it from being at all effective. The fact that it has to be presented to courts of second instance (which are located only in departmental capitals and therefore a long way from most towns) and that these courts delegate its execution to so-called executing officers, who in many cases are neither judges nor lawyers, means that this procedure is completely inappropriate for safeguarding against violations of fundamental rights. As a rule, the court names a private individual to that post, and consequently, the executing officer frequently is not respected by the non-judicial authorities.

264. Consequently, as stated in the sixth report, there are currently two major problems. The first and main one is normative, in that the procedure provided for handling habeas corpus is totally inappropriate for achieving the desired end (immediate cessation of the violation). The second, which is a direct consequence of the first, is the systematic failure to observe the time-limits provided under the law (which are in themselves too long).

265. The law also covers responsibility of officials in respect of the writ of habeas corpus, providing for the possibility that the court which issued the writ of habeas corpus may also order that the individuals or authorities

responsible for the illegal detention be prosecuted or arrested and that they be suspended in the exercise of their duties or functions (art. 76 of the Act). Moreover any error or irregularity on the part of the executing officer may prompt the Chamber or Court to ask him for information in order to make a determination (art. 77 of the Act). Another form of penalty may be imposed in cases where an official does not comply with an order by the Chamber or Court to release an individual, in which case the court shall dismiss the disobedient official and order that he be prosecuted (art. 73 of the Act). Furthermore, failure on the part of an official or authority to provide the certifications required in a constitutional proceeding (art. 83) or to reply to a request for information within the time-limit required under the law is punishable by a fine (art. 84).

266. Thus the Human Rights Division believes that the proposed reforms of habeas corpus now being worked out at the level of the executive and the judicial community are moving in the direction of an effective and positive reform, especially through the elimination of the institution of executing officers and its replacement by a system in which a court of first or second instance will hear the proceedings for habeas corpus in an oral or public hearing. In order to safeguard the adversary procedure, the parties must be permitted to participate and be given the possibility to introduce evidence in the appropriate hearing, without prejudice to the ability of the Court or judge to verify the conditions of the arbitrary detention. It is recommended that the proceedings be completed within 24 hours by the same judicial authority conducting the oral proceedings. The decision may be contested before a higher authority. As far as the initial characteristics of the proceeding are concerned, formal requirements should be abolished in that anyone should be able to file a petition, including by telephone, nor should the role of the Office of the Counsel for the Defence of Human Rights be overlooked. A provision should be included prohibiting rejection of a complaint on the grounds that it does not meet the requirements concerning form without seeking to correct it. The reform must provide for disciplinary and criminal measures against officials who, when issued with a summons, fail to comply with an order to produce a detainee or intentionally fail to attend an oral proceeding, and against judicial authorities who wilfully exceed the legal time-limits. Likewise, measures must be taken to guarantee continuous service to the public, providing 24-hour-a-day coverage as appropriate.

267. In the application of habeas corpus, it is necessary to take into account not only the violation of the liberty and integrity of the person, but also threat of injury, improper treatment of detainees, limitations on freedom of movement, solitary confinement and prolonged detention. On the other hand, while there are cases in which a judicial decision might be contested by means of the remedy of habeas corpus (for example, in the case of a serious violation of due process), it is necessary to have legislation to prevent the unrestricted use of this remedy against judicial decisions when other means of judicial review exist (it is essential that the right of appeal against orders for provisional arrest be re-established). In alleged cases of enforced disappearance, the judicial authority should conduct an investigation by all means appropriate to the situation in order to determine the whereabouts of the citizen, informing the Office of the Attorney General of the Republic of these facts for the purposes within its competence.

(b) The ineffectiveness of the remedy of habeas corpus in judicial practice

268. In order to gain a clearer idea of how the remedy of habeas corpus really operates, the Human Rights Division conducted a study on the basis of active verification carried out by various regional offices. The results demonstrate the ineffectiveness of the remedy in Salvadorian judicial practice.

269. Verification of a total of 138 decisions of the Constitutional Chamber of the Supreme Court of Justice during the first six months of 1992, shows that the number of decisions denying the request for release of the petitioner or referring the application for habeas corpus back to the court in which proceedings were initiated far outnumber those in which the request for release is granted.

Decisions for release of petitioners	25	18.11%
Decisions denying the request for release of petitioners or referring the proceedings back to the court	113	81.84%
Total decisions	138	99.95%

270. Based on this sample it is possible to affirm that the situation with respect to applications for habeas corpus clearly makes the remedy ineffective.

271. Most of the applications relate to alleged arbitrary detentions ordered by judicial authorities. Decisions involving threats against individual liberty, legal assistance, solitary confinement, police surveillance or hostility, arbitrary police detention and freedom of movement are not reflected, nor is there any discussion of the issue of judicial monitoring of detention during states of emergency.

272. The court decisions analysed, do not mention, at least in the body of the text, the person or authority against which the proceedings for habeas corpus are filed. However, it is possible to obtain this information from the preambular paragraphs of the decisions studied in this sample.

Criminal court or courts of first instance	107	82.3%
Treasury Court	4	3.07%
Criminal Chamber	2	1.53%
Magistrate's court	1	0.76%
Transit Court	1	0.76%
Military Court of Investigation (Cavalry Regiment)	1	0.76%
Not indicated	14	10.76%
Total	130	99.94%

273. The authorities challenged are predominantly the criminal courts or courts of first instance (82.3 per cent), of which 47.69 per cent are located in San Salvador and 34.61 per cent in the interior of the country. There are no decisions referring to either police, municipal or administrative authorities (such as prison authorities).

274. The sixth report of the director of the ONUSAL Human Rights Division (A/47/912-S/25521), has confirmed that arbitrary detention for petty misdemeanours is the most important violation of the right to personal liberty (para. 124). It is therefore significant that no summonses have been served to police authorities responsible for arbitrary detention. This is because the right to judicial control does not exist owing to the ineffectiveness of the remedy of habeas corpus.

Court decisions on habeas corpus resulting in the release of the accused

275. On the other hand, it is possible to distinguish decisions to release the accused in the absence of grounds for his detention from those that uphold the decision of the executing officer to release the accused also because there are no grounds for his detention.

Decisions to release the accused
(in the absence of grounds for his detention)

Releasing the accused (in the absence of grounds for his detention)	9	6.52%
Upholding the decision of the executing officer to release the accused (in the absence of grounds for his detention)	16	11.59%
Total number of decisions	25	18.11%

276. In all the cases that were examined, the remedy of habeas corpus was invoked in instances of pre-trial detention in judicial proceedings where the charges involved various criminal offences.

277. In most cases, such decisions were taken on the grounds of insufficient judicial evidence in relation to the offence with which the individual was charged. For example, errors and lack of coherence in extrajudicial statements (case No. HC10592), detention based only on an alleged extrajudicial confession in which the accused had not confessed to the offence in question (case No. HC12792), etc.

278. In one instance (case No. HC6792), the executing officer's decision to deny a request for release and continue the proceedings was overturned.

Decisions upholding the executing officer's decision to release the detainee

279. These involve recourse measures invoked in cases of pre-trial detention. The frequency of this kind of decision is higher than in the preceding case (11.59 per cent) and, in most instances, such decisions were taken on the grounds of insufficient judicial evidence.

Court decisions denying request for release or ordering that the application be referred back to the court in which the proceedings were initiated

280. These account for the overwhelming majority of decisions (81.84 per cent), within which it is possible to distinguish decisions that deny the accused's request for release because grounds for detention exist, from those that order that the application be referred back to the tribunal in which the proceedings were initiated.

Decisions to continue the proceedings because grounds for detention exist	84	60.86%
Decisions ordering that the application be referred back to the tribunal in which the proceedings were initiated	29	20.98%
Total number of decisions denying request for release or referring the application back to the tribunal in which the proceedings were initiated	113	81.84%
(Total number of decisions to release the accused)	25	18.11%
Total	138	99.95%

Decisions ordering that proceedings be pursued because it is considered that there are grounds for the detention

281. These refer mainly to applications for habeas corpus in respect of pre-trial detention in proceedings relating to a variety of offences.

282. In some cases, the Constitutional Chamber made a decision without asking about the case, accepting the report of the executing officer (see decisions on cases Nos. HC2692 and HC2892).

283. In other cases, it overturned the decision of the executing officer to release the individual (cases Nos. HC2792, HC2992, HC3092). In one case, it was stated that the defendant's claim that he just happened to have the same name as the person charged with the offence was not a matter which could be dealt with through the remedy of habeas corpus (case No. HC10992).

284. The grounds for these decisions refer mainly to the adequacy of the evidence adduced. A study of the decision reveals that the evidence considered by the Constitutional Chamber as sufficient grounds for detention falls into various categories. The evidence most frequently accepted includes statements by witnesses, extrajudicial confession, forensic examination, judicial confession, findings of searches, seizure, statements by victims, prior existence of stolen goods, sworn statements, admission by defendant, expert evidence, proof of public documents, official inspection of corpses and autopsy, evaluation reports, and failure to pay bail.

Decisions requiring that the application be referred back to the court in which the proceedings were initiated

285. There are various decisions of the Chamber ordering that the application be referred back to the court without a ruling, citing a variety of different reasons: either because it is clear from the official notification that the

defendant's liberty is not being restricted, because the judge had not ordered the defendant to be detained, because the court had passed sentence, or because the judge had revoked the defendant's detention.

286. In other instances, the case was referred back because the judge had ordered a cessation of proceedings. In that connection, the Chamber has said that it is not competent to deal with orders regarding cessation of proceedings (case No. HC292).

(c) Habeas corpus de lege ferenda

287. In order to resolve the current situation, various sectors of society and legal circles in El Salvador have proposed urgent reforms designed to make habeas corpus a remedy that is protective of rights under the law and, above all, one which is useful and effective in judicial practice. The studies undertaken inter alia by CORELESAL have led to this conclusion, on which there is now national consensus.

288. In February 1993, with the same end in view, the Human Rights Division organized a round table on constitutional justice with the participation of independent lawyers, university professors and representatives of State, trade union and non-governmental agencies.

289. The meeting provided an opportunity to compare the different opinions held in El Salvador on the question of habeas corpus. Despite the wide variety of opinions expressed, the Human Rights Division was able to identify a series of proposals which, taken as a whole, reflected the broad consensus that the current situation was inadequate and that reform was needed to turn the remedy into an effective guarantee. Following are some of the proposals which emerged from that meeting: amendment of the provisions of the Constitutional Procedures Act governing habeas corpus; abolition of the function of executing officer; the inapplicability of habeas corpus to judicial detention; abolition of procedural formalities; establishment of shorter time-limits; establishment of a procedure for appealing decisions rejecting applications for habeas corpus; abolition of reviews by higher courts; and, in the case of enforced disappearances, the need to refer cases to the Office of the Attorney-General, in order that it might conduct a special investigation and issue a public report.

290. These recommendations, which generally coincide with those put forward by the Human Rights Division of ONUSAL in its various reports, have also been a matter of concern to the Ministry of Justice which, as part of the judicial reform measures outlined in section V, has drawn up a preliminary bill containing substantive changes to the existing legislation governing habeas corpus, along the lines advocated by ONUSAL.

291. Although the proposed amendments embody most of the recommendations made by ONUSAL and the concerns expressed by Salvadorian legal circles, they cannot in themselves resolve the problems which limit the effectiveness of the remedy of habeas corpus as regulated by the constitution, foremost among which is the need to include a provision prohibiting suspension of the remedy during states of emergency. In addition, jurisdictional oversight which is broader and more accessible than that currently provided (by the Constitutional Chamber of the

Supreme Court) must be ensured, as recommended in the sixth report. The proposal by the Ministry of Justice will be a vital step in that direction, which will need to be supplemented in due course by appropriate constitutional reform.

B. The Office of the National Counsel for the Defence of Human Rights

292. In its sixth report, the Human Rights Division noted that the Office of the National Counsel for the Defence of Human Rights had begun "to show signs of activity which augur well for its ability to fulfil its constitutional mandate and live up to society's legitimate expectation that it will be able to play a substantive role in safeguarding human rights" (A/47/912-S/25521, para. 247). The report added that "if this emerging trend becomes a sustained and systematic course of action, the Office of the National Counsel will be clearing the way for future effective oversight of legality in respect of human rights" (ibid., para. 250).

293. The activities of the Office of the National Counsel during the three months covered by this report have followed this direction. It has established the autonomy needed to carry out its mandate effectively. It has demonstrated exemplary commitment to the rationale and thrust of the peace agreements and the need to consolidate democracy. This is shown by the constructive approach it has taken to the report of the Commission on the Truth, particularly the public undertaking it has given to implement the latter's recommendations directed at the National Counsel in accordance with a fixed timetable.

294. The thrust of the recommendations is that the Office of the National Counsel should take stock of its immediate priorities and requirements, issue an action plan for visits to detention centres, carry out its activities wherever violations are considered to exist and, establish regional offices throughout the country. The Office of the National Counsel has publicly undertaken to meet these requirements on the understanding that they form part of the peace agreements with which all institutions of the Republic are required to comply.

295. At the same time, the Office of the National Counsel has published a series of determinations, together with the corresponding reports, in most cases establishing the existence of violations of several categories of human rights:

(a) Case No. SS - 0056 - 92 (ONC). It is established that the State and the armed forces were responsible for violating the right to life of a young man, Ricardo Ernesto Clará Majano. It is recommended that compensation should be paid to members of the victim's family and the Commander of the Fifth Infantry Brigade is notified that he is required to provide the Office of the National Counsel with such information as it may request and that failure to do so would render him liable to penal or administrative sanctions;

(b) Case No. SS - 0393 - 92 (ONC). It is established that the right of Mr. Timoteo Castañeda Herrera to integrity of person was violated by Mr. Miguel Angel Castillo Monge, former member of the Atlacatl rapid reaction infantry battalion. The case is being investigated by the Court of First Instance of San Juan Opico. The State is responsible for failing in its duty to

guarantee the fundamental rights of Mr. Castañeda Herrera, and for use of weapons of war in the violation concerned. No violation of the right to due process of law by the justice of the peace of San Juan Opico is established. It is recommended that the Joint Chiefs of Staff of the armed forces should strictly supervise the use and possession of weapons of war by members of the armed forces;

(c) Case No. SS - 0144 - 93 (ONC). It is established that the right to liberty and the right to due administrative process of Mr. Rigoberto Osorio, Mr. Francisco Astacio and Mr. Gerardo Coto were violated. The person responsible for the violation is the Director of the Municipal Police of San Salvador. It is recommended that the mayor of the city of San Salvador should monitor the legality of the actions of the Municipal Police, that compensation should be paid to the victims and that the appropriate punishment should be meted out to the Municipal Police officer having badge No. 273.

296. These determinations reflect the autonomy with which the Office of the National Counsel is discharging its duties and augur well for the future importance of its activities once it has consolidated its institutional structure. It is worth noting that, at the time of the drafting of this report, the National Counsel, Mr. Mauricio Molina Fonseca, had begun the process of extending the work of the Office of the National Counsel to the whole of the country by opening a regional office in the Department of Santa Ana.

297. The ONUSAL Human Rights Division is aware that its mandate calls for dynamic and close cooperation with the Office of the National Counsel, since the latter will eventually be required to take over the functions now performed by ONUSAL under the mandate given to it by the parties. With that in view, the Division is assisting in the recruitment of staff for branches of the Office of the National Counsel in Santa Ana, San Miguel and San Vicente (the Division is represented on the selection board) and in staff training in general (round table on protection of human rights, 3-11 March; basic training in criminal law and forensic research, 22 and 23 April 1993).

C. Human rights components of the reform of the armed forces and the security forces

1. Formulation of a new military doctrine and restructuring of education in military training

298. As indicated in the sixth report, the human rights components of the reform of the armed forces are being implemented in a satisfactory manner especially as regards aspects of military training related to the role of the armed forces in a State governed by the rule of law and respect for human rights. In this regard, a number of measures have continued to be developed with a view to enhancing the armed forces' new role in the democratic State. This has resulted in two sets of reforms of plans and programmes pertaining to military training, both basic and advanced. These reforms are geared on the one hand towards human rights training and, on the other, as part of an interdisciplinary approach, to issues relating to the laws of war.

299. Concerning the first area of training, human rights, during the period covered by this report, courses on the subject were taught at the various General Staff and Arms Colleges. A course on human rights and administration of justice was taught at the Dr. Manuel Enrique Araujo Command and General Staff College and courses on constitutional law (106 hours) and human rights (90 hours) were taught simultaneously at the General Manuel José Arce Arms and Services College.

300. Concerning the second area of instruction, the laws of war, a course focusing primarily on international humanitarian law was taught at the Manuel José Arce Arms and Services College; the curriculum was structured basically around the provisions of the Geneva Conventions and the additional protocols thereto as well as various publications of the International Red Cross concerning the laws of war for armed forces.

301. These activities are part of a larger programme that includes courses on the laws of war and international humanitarian law at the Military College, the Command and General Staff Colleges and other specific programmes such as orientation courses for officers and courses for newly promoted sergeant-majors, those for staff and those for firearms experts.

302. As far as the development of the new armed forces doctrine provided for by the peace agreements is concerned, the Doctrine Command of the Armed Forces has been working out the details of the broad outlines laid down under the constitutional reform.

303. It should be recalled, however, that under the terms of the peace agreements, the new armed forces doctrine must be published; this obligation has yet to be fulfilled. In view of the time that has elapsed, it is vital that the overall thesis be published quickly, together with the specific details of the military doctrine of the Salvadorian armed forces in this period of peace and consolidation of democracy. This is all the more important in view of the fact that the role of the armed forces during this period must necessarily be to reaffirm discipline and military honour as necessary elements of an army at the service of democracy. 4/ Thus, the promotion of a new military code of conduct must constitute the cornerstone of a new and constructive relationship between the armed forces and civilians.

2. Formation and functioning of the National Civil Police

304. The effective deployment of the new National Civil Police is an issue that affects not only public order but is also directly related to institutional conditions and to the fulfilment of the State's duty to guarantee and protect human rights. The maintenance of law and order must not be used as an excuse to suppress basic freedoms and human rights. On the contrary, it must guarantee the enjoyment of such freedoms and rights. However, human rights cannot be enjoyed in the absence of law and order. Hence the importance given by the agreements to the deployment of a modern police force that can guarantee the security of the citizenry within the framework established by the law.

305. So far, the National Civil Police has replaced the former National Police in three of the fourteen departments, although there has, as yet, been no

reduction in the latter's personnel; on the contrary, its ranks have swollen. ONUSAL has expressed concern at this development, especially since this increase has been achieved using personnel from two former public security forces (the National Guard and the Treasury Police) and one demobilized infantry battalion.

306. This situation is heightening the contradiction between the mandate to dissolve the National Police and the pressure that is being exerted to move in the opposite direction.

307. The National Public Security Academy is continuing to implement the agreement of 17 June 1992 to ensure that 20 per cent of vacancies in the National Civil Police are filled by active officers of the National Police and another 20 per cent by former FMLN combatants under a rigorous selection process.

308. In line with its mandate, the ONUSAL Human Rights Division, has been establishing increasingly greater cooperation with the National Public Security Academy with respect to the human rights components that must be included in the training of the new police force. In this regard, it is helping to coordinate the human rights courses delivered at the Academy and is also providing bibliographical material on a regular basis for those courses.

309. Technical cooperation for the evaluation of applicants is another area where the Human Rights Division is collaborating with the National Public Security Academy.

310. Currently, the Human Rights Division and the National Public Security Academy are working on a cooperation agreement to be signed between the two institutions with a view to increasing ONUSAL support for the activities of the National Public Security Academy so as to provide sound training in the monitoring of the respect for human rights in the new National Civil Police in line with the provisions of the peace agreements.

D. Information and education campaign on human rights

311. As stated in the sixth report, human rights education is vital in order to build a human rights culture to replace the culture of violence and intimidation that was associated in the past with illegitimate forms of exercise of political power. The people, especially the most disadvantaged sectors, must have access to a human rights culture. Knowing one's rights is perhaps one way of ensuring that these rights are protected and promoted.

312. The ONUSAL Human Rights Division is fully convinced that human rights education in El Salvador must be made a priority goal of the Government, educators and non-governmental organizations. This collective task ought to be implemented without any political pre-conditions whatsoever since it is in the interest of society as a whole and of the State to ensure that people of all ages, groups and walks of life have the information and resources needed to exercise their rights and learn to respect the rights of others.

313. Only when there is full awareness of the rights and duties that citizens and the State should be able to exercise without any limitation or restriction

whatsoever, will it be possible to have a human rights culture applicable to everyday life.

314. It is important to highlight the activities carried out by Salvadorian non-governmental organizations as well as the role that the recently created Institute for Human Rights of the Office of the National Counsel for the Defence of Human Rights must play in that regard.

315. At the official level, no efforts have yet been made to introduce the teaching of human rights on a large scale into the formal educational system, notwithstanding the initiatives in that regard that have been coordinated by the Ministry of Education and various international development agencies.

316. A key initiative in the area of education was the International Symposium on Education for Peace organized by the Ministry of Education in collaboration with the United Nations Educational, Scientific and Cultural Organization (UNESCO) with a view to promoting discussions leading to a national consensus on educational policy vital to the process of consolidating the peace and the rule of law.

317. In order to help disseminate information and education on human rights on a large scale, during the period covered by the present report, ONUSAL, with the participation of various institutional and social sectors, prepared a massive information and education campaign on human rights which is to be aired on television and radio throughout the country starting in July 1993.

V. DEMOCRACY, HUMAN RIGHTS AND DEVELOPMENT

318. In his report entitled "An Agenda for Peace" (A/47/277-S/24111), the Secretary-General of the United Nations, Mr. Boutros Boutros-Ghali, formulated the concept of "post-conflict peace-building", which he defined as "efforts to identify and support structures which will tend to consolidate peace" in order to prevent a recurrence of hostilities. Once peacemaking and peace-keeping have achieved their objectives, "only sustained, cooperative work to deal with underlying economic, social, cultural and humanitarian problems can place an achieved peace on a durable foundation" (para. 57).

319. United Nations policy in this regard is based on the conviction that social peace is as important as strategic or political peace and on recognition of the relationship between democratic practices and the achievement of genuine peace and security in any new and stable political order. The peace process in El Salvador affords a special opportunity for developing this new concept of peace-keeping further.

320. Given that sustained development requires certain democratic guarantees and respect for human rights, the achievement of this objective in El Salvador implies a consolidation of the peace process, social development and economic growth with equity. The peace agreements defined this interrelationship by saying that economic and social development in El Salvador were a prerequisite for the democratic reunification of Salvadorian society. At the same time, the reunification of Salvadorian society and a greater degree of social cohesion are indispensable in strengthening development.

321. Here, the international community has a responsibility and duty to support the Salvadorian process with financial flows, investment and cooperation as a complement to the major effort being made by the Salvadorian people to consolidate peace, democracy and an order that is conducive to the enjoyment of human rights.

322. The United Nations is acting as a coordinator in this area by directing international cooperation towards El Salvador at a level commensurate with the magnitude of the peace process.

323. While this coordination by the United Nations system is yielding significant results, it has, nevertheless, failed to provide the peace process with the adequate external support. The ONUSAL Human Rights Division is appealing for an increase in international cooperation flows to El Salvador as the international community's contribution to an unprecedented domestic effort. From the standpoint of human rights, this contribution will also constitute a tangible expression of the unity and indivisibility of individual freedoms and political, social and economic rights.

VI. ASSESSMENT OF THE RECOMMENDATIONS BY THE HUMAN RIGHTS DIVISION

324. Under the San José Agreement, the parties pledged to implement promptly the recommendations of the ONUSAL Human Rights Division. This provision is rooted in the conviction of both the Government of El Salvador and FMLN that international verification of the enjoyment of human rights in El Salvador should not be limited to mere observation but should promote and influence changes in the structural, legal, institutional and social conditions that had led to widespread serious violations during the armed conflict.

325. Accordingly, active verification in El Salvador was devised as a means of promoting and protecting human rights on a level never before experienced in the United Nations system. The only viable and effective means of ensuring that active verification had an impact on the real situation, in keeping with the desire of the parties, was to have the findings of the monitoring process reflected in concrete and specific recommendations to be implemented by the parties.

326. The recommendations thus express the will of the parties, which have conferred an authority on the ONUSAL Human Rights Division that must be exercised with the overall rationale of the peace process in mind. The recommendations are teleological in nature because they seek to promote the achievement of the ultimate objectives of the peace process. Yet their implementation does not necessarily imply literal response. In some cases, such a response may be necessary, but in others the recommendation's objective, significance and practical execution can be approached in a number of ways.

327. Beginning with its second report, the Human Rights Division has been formulating a series of recommendations. However, no specific mechanism has been envisaged for their implementation, which has been somewhat ad hoc. As noted in the sixth report, the Government "has accepted some of these recommendations on an ad hoc basis, but the recommendations as a whole ... have

not received due attention". The sixth report went on to add that: "As a result of recent consultations, the Human Rights Division has identified a readiness on the part of both the Government and FMLN to appropriately and effectively address the recommendations contained in the various reports. In the short term, there are plans for establishing the consultative mechanisms required for systematic, effective and mutually agreed follow-up to the recommendations" (A/47/912-S/25521, para. 282).

328. The favourable prospects for action indicated in the sixth report have become a reality, for the Minister of the Presidency, Dr. Oscar Alfredo Santamaría, and the Special Representative of the Secretary-General of the United Nations and head of ONUSAL, Dr. Augusto Ramírez Ocampo, have agreed that the subject of human rights and, specifically, the recommendations of the Human Rights Division should be periodically evaluated at joint meetings at the highest level. The outcome of the initial meetings has been highly satisfactory, since they have made it possible not only to initiate the process for full implementation of the recommendations but to review the entire human rights situation as well. It is in this context that the Human Rights Division has submitted to the Government a report of violations calling for a thorough investigation.

329. At the same time, the Government and ONUSAL have agreed on the establishment of executive machinery to implement agreements reached in the context of the joint periodic evaluations at the highest political level referred to in the paragraph above. This executive machinery is constituted by the Presidential Commissioner for Human Rights and the Director of the ONUSAL Human Rights Division, with their respective teams of technical consultants. The establishment of this executive machinery is a sign that the political will required for the implementation of the ONUSAL recommendations exists.

330. In connection with the establishment of the machinery to follow up the recommendations of the Human Rights Division, section V of the report which the Secretary-General of the United Nations submitted to the Security Council on 21 May 1993 (S/25812) referred to an appendix (S/25812/Add.3) containing a full list of the recommendations of the ONUSAL Human Rights Division, to be implemented in fulfilment of the obligations resulting both from the San José Agreement and from the report of the Commission on the Truth. The recommendations are as follows:

1. Ratification of international human rights instruments to which the Government of El Salvador has not acceded or that it has not ratified as yet (listed in the sixth report);

2. Structural and functional reform of the judiciary;

3. Establishment of a special commission of inquiry to investigate arbitrary and extralegal executions;

4. Amendment of the legislation governing the remedies of habeas corpus and amparo to make them effective;

5. Establishment of a compensation fund for victims of human rights violations;

6. Improvement of the composition and powers of the National Council of the Judiciary and ensuring the independence of the Judicial Training School;

7. Elimination of extrajudicial confession;

8. Definition of torture and enforced disappearance as offences in special criminal legislation;

9. Drafting and passing legislation regulating the conduct of law enforcement officials;

10. Abolition of the practice of arbitrary detention for petty misdemeanours and repeal of the 1886 Police Act;

11. Temporary application of the Act governing the procedure for administrative detention or the imposition of administrative fines;

12. Amendment of the disciplinary regime under the Career Judicial Service Act so that the Supreme Court of Justice or its President can investigate formally any irregularities or violations of due process;

13. Authorization of a visit to El Salvador by the ILO Committee on Freedom of Association;

14. Investigations by the Supreme Court of violations of due process;

15. Prompt legal recognition of associations and trade unions.

331. At the initiative of the Executive - to be exact, the Ministry of Justice - a start has been made on the process of implementing a great number of recommendations, through the global and sectoral reforms that the Ministry of Justice is preparing with a view to eliminating the flaws that continue to exist in the administration of justice. Examples of such action are the elimination of extrajudicial confession, the definition of torture and enforced disappearance as offences, and the commencement of the reform of the legislation on habeas corpus.

332. Furthermore, as already indicated in this report, in the period under review developments with regard to the issue of arbitrary detention for petty misdemeanours appear to have begun to lead to action representing a promising start on the implementation of the relevant recommendation. Once implementation of the relevant new plan begins, the situation will have to be assessed again. The recommendations on military training and a new military doctrine are being implemented properly. As of the completion of this report, the Armed Forces have begun to fulfil their undertakings with regard to the issuance of a new military doctrine.

333. Generally speaking, in the context of the bilateral meetings being held both in the area of the political consultation mechanism and in the operational area, ongoing implementation of recommendations is being assessed and the establishment of criteria for implementing recommendations whose implementation has not yet begun is being considered. As a result of this work, the eighth

report of the Human Rights Division will contain a specific assessment of the implementation of each individual recommendation.

VII. CONCLUSIONS

334. In general, with some slight variations, the trend towards a definite improvement compared with the situation that existed prior to the signing of the peace agreements continues. At the same time, the situation remains very mixed, in that violations - some of them serious and systematic - involving essentially the right to life, security, integrity of person, liberty and due process of law continue to occur.

335. The trend towards the absence of enforced disappearances and torture, already referred to in the sixth report, has continued (although one instance of torture was reported during the period covered by this report); at the same time, arbitrary and extralegal executions and organized acts of "private justice" have been committed using methods and practices displayed by irregular groups, whose possible resurgence has generated considerable alarm in the church, the Office of the National Counsel for the Defence of Human Rights and other representative institutions.

336. The right to liberty continues to be affected by arbitrary detentions for "petty misdemeanours", although the competent authorities, in coordination with ONUSAL, have begun to adopt corrective measures which should mitigate the severity of this problem.

337. With regard to the administration of justice, the problems analysed in the Division's earlier reports on the subject have persisted. At the same time, however, the executive branch, proceeding in a manner consistent with initiatives under way in civilian society, has encouraged significant judicial reforms which reflect modern doctrines that guarantee human rights. Violations of the due process of law continue to be widespread.

338. The right to freedom of association as it pertains to trade union freedoms, and the effective enjoyment of workers' rights, continue to be subject to the limitations and restrictions outlined in the sixth report. Moreover, the promising agreements reached within the framework of the Forum for Economic and Social Consultation have encountered serious obstacles, given the momentary paralysis in consultations between Government, management and labour.

339. Freedom of expression and political rights are not subject to any restriction and are guaranteed by the State.

340. The activities of the Office of the National Counsel for the Defence of Human Rights have entered a qualitatively advanced stage, and the Office is emerging as an institution with the autonomy and political will required for it to fulfil its constitutional mandates to promote and safeguard human rights. In that connection, oversight of legality in respect of human rights in El Salvador, through the quasi-jurisdictional mechanism of the Ombudsman, is beginning to have a beneficial impact on the rights of the population.

341. Although ordinary violence has not increased disproportionately compared to the period before peace was established, it is exerting a negative impact on society that clearly is not conducive to the enjoyment of human rights. The weight of ordinary violence, measured in terms of the deaths caused and the calibre of weapons used, continues to generate a growing feeling of insecurity in the population. The steps taken by the Government to collect weapons from the population have not produced significant results. As long as that situation continues, not only will ordinary violence continue to pose a serious problem, but also, the latent conditions for a resurgence of selective acts of political violence will persist.

342. It is necessary to point out that the violations currently being reported are occurring in a qualitatively different framework from the serious human rights situation which existed in El Salvador in the past. The violations being committed today are not a reflection of the will of the State, but rather, are acts which must be interpreted as carry-overs from the situation that existed prior to the signing of the peace agreements. At the present time, the political, institutional and social changes taking place in El Salvador are, on the contrary, characterized by the affirmation of the rule of law, democratic life and the protection and promotion of human rights. This process cannot unfold in a linear fashion, and by its very nature gives rise to a series of contradictions and encounters various difficulties. The essential factor here is that the momentum of the peace process gradually overcomes problems, even those arising from the fact that certain agreements are not yet being observed. The will of the parties to honour the human rights agreements plays a fundamental role in this positive process; it deserves the support of the international community.

343. The agreement reached with the Government of El Salvador concerning the assessment of the human rights situation and follow-up to the recommendations of ONUSAL, through machinery for consultation at both the political and executive levels, is an example of political will that is fully consistent with the spirit and the letter of the peace agreements.

Notes

1/ S/25500, annex.

2/ In view of the methodology used by this report and the lack of space, only a few of the complaints received are mentioned, and then only in brief. In all cases, sources may be consulted in the ONUSAL Human Rights Division.

3/ It should be noted that a single case often involves several different violations.

4/ When this report was being drafted, the Government published the outlines of the new armed forces doctrine in compliance with the peace agreements. The text made available to the Salvadorian people in the national dailies refers to the constitutional mission of the armed forces and the principles of the new doctrine. It points out, inter alia, that the armed forces doctrine is based on the distinction between the concepts of security and defence, the purpose of national defence - which is the responsibility of the armed forces - being to safeguard the country's sovereignty and territorial

Notes (continued)

integrity in the face of an external military threat. Security, while including the notion of national defence, is a broad concept based on strict respect for the personal and social rights of the individual; it encompasses not only national defence, but also economic, political and social aspects that fall outside the constitutional area of competence of the armed forces and that are the responsibility of other sectors of society and of the State.

APPENDIX

Complaints of violations, February-April 1993

COMPLAINTS DECLARED ADMISSIBLE BY ONUSAL

FEBRUARY-APRIL 1993

Complaints declared admissible	February	March	April	Total
VIOLATIONS OF THE RIGHT TO LIFE				
Arbitrary executions	15	6	11	32
Attempted arbitrary executions	1	2	3	6
Death threats	19	17	11	47
VIOLATIONS OF THE RIGHT TO INTEGRITY OF PERSON				
Torture	2	0	1	3
Ill-treatment	21	28	12	61
Excessive use of force	4	6	7	17
VIOLATIONS OF THE RIGHT TO SECURITY OF PERSON				
Enforced disappearances	3	0	1	4
Abductions	0	3	2	5
Other threats	9	14	15	38
VIOLATIONS OF DUE PROCESS OF LAW				
PROCEDURAL GUARANTEES				
Right to be tried by a competent tribunal within a reasonable period of time	12	2	6	20
Right to defence	8	1	3	12
Right not to be coerced	6	1	1	8
Right to multiple jurisdictional instances	0	0	0	0
RIGHT TO JUSTICE				
Legal obligation of the State to investigate and punish	17	30	27	74
Right to compensation	1	0	0	1

Complaints declared admissible	February	March	April	Total
VIOLATIONS OF THE RIGHT TO PERSONAL FREEDOM				
Arbitrary detentions	16	10	17	43
Arbitrary detentions for petty misdemeanours	16	9	6	31
Procedural guarantees	4	2	2	8
VIOLATIONS OF THE RIGHT TO FREEDOM OF EXPRESSION	3	0	2	5
VIOLATIONS OF THE RIGHT TO FREEDOM OF ASSOCIATION				
Right to associate freely	2	5	2	9
Freedom of assembly	0	1	0	1
Trade union freedom	0	0	0	0
VIOLATIONS OF THE RIGHT TO IDENTITY DOCUMENTS				
To obtain personal identification documents	1	0	0	1
To obtain civil status documents	0	2	1	3
TOTAL	160	139	130	429

COMPLAINTS DECLARED ADMISSIBLE BY CATEGORY OF RIGHT VIOLATED

FEBRUARY-APRIL 1993 (PERCENTAGES)

Violation	February	March	April	Total
Life	21.87	17.99	19.23	19.7
Integrity	16.88	24.46	15.38	18.91
Security	7.5	12.23	13.85	11.19
Due process	27.5	24.46	28.46	26.81
Personal freedom	22.5	15.11	19.23	18.95
Freedom of expression	1.88	0	1.54	1.14
Freedom of association	1.25	4.32	1.54	2.37
Personal documentation	0.63	1.44	0.77	0.95
Total	100	100	100	100

COMPLAINTS DECLARED ADMISSIBLE BY REGION

FEBRUARY-APRIL 1993 (PERCENTAGES)

	SS	SA	SV	SM	C	U
Right to life	26.92	19.74	6.25	8.22	21	33.33
Right to integrity	20.33	27.63	14.58	17.81	2.4	33.33
Right to security	12.64	15.79	0	9.58	9.7	22.22
Due process	13.19	18.42	56.25	46.21	36	0
Personal freedom	24.18	13.16	16.57	13.7	24	0
Freedom of expression	0.55	0	0	2.74	4.8	0
Freedom of association	2.2	5.26	2.06	1.37	0	0
Personal documentation	0	0	4.17	1.37	0	11.11
Total	100	100	100	100	100	100

SS San Salvador Regional Office

SA Santa Ana Regional Office

SV San Vicente Regional Office

SM San Miguel Regional Office

C Chalatenango Subregional Office

U Usulutan Subregional Office

PERSONS PRESUMED RESPONSIBLE FOR VIOLATIONS
FEBRUARY-APRIL 1993 (percentages)

Persons presumed responsible	Feb.	Mar.	April	Total
MEMBERS OF NATIONAL POLICE	33.1	46.7	31.54	37.14
IRREGULAR GROUPS (DEATH SQUADS, ETC.)	0.63	2.88	6.85	2.45
PERSONS UNKNOWN	12.5	7.91	12.31	10.91
MEMBERS OF MUNICIPAL POLICE	6.88	2.88	2.31	4.02
MEMBERS OF AUXILIARY TRANSIT POLICE	0	0.72	1.54	0.75
MEMBERS OF ARMED FORCES	15	7.91	7.69	10.2
PUBLIC PROSECUTOR'S OFFICE	0.63	0	0.77	0.47
ADMINISTRATION	0.63	1.44	0.77	0.95
JUDICIARY	13.1	14.3	26.38	17.63
ANTI-DRUG-TRAFFICKING UNIT	1.88	0	3.06	1.65
MEMBERS OF FMLN	3.13	2.88	1.54	2.52
OTHER	12.5	12.2	9.23	11.32
TOTAL	100	100	100	100

PERSONS PRESUMED RESPONSIBLE BY CATEGORY OF RIGHT VIOLATED
FEBRUARY-APRIL 1993
(PERCENTAGES)

Persons presumed responsible	Life	Integrity	Security	Due process	Personal freedom	Freedom of expression	Freedom of association	Documen-tation
MEMBERS OF NATIONAL POLICE	14.86	76.89	26.69	9.12	71.98	0	5.56	16.6
IRREGULAR GROUPS (DEATH SQUADS, ETC.)	8.95	0	3.81	0	0	0	0	0
PERSONS UNKNOWN	34.1	0	36.65	0	0.96	25	0	0
MEMBERS OF MUNICIPAL POLICE	1.9	5.65	0	0	12.73	0	0	0
MEMBERS OF AUXILIARY TRANSITORY POLICE	0	1.67	0	0.98	1.33	0	0	0
MEMBERS OF ARMED FORCES	16.75	5.12	10.29	13.1	4.26	25	22.22	0
PUBLIC PROSECUTOR'S OFFICE	0	0	1.86	0	0	0	16.67	0
ADMINISTRATION	0	0	0	0.76	0	0	27.78	0
JUDICIARY	0	3.33	0	62.46	1.59	0	0	0
ANTI-DRUG TRAFFICKING UNIT	5.85	1.23	6.06	0	0	16.57	0	0

Persons presumed responsible	Life	Integrity	Security	Due process	Personal freedom	Freedom of expression	Freedom of association	Documen-tation
MEMBERS OF FMLN	6.95	1.23	5.86	0	0	16.57	0	0
OTHER	15.62	6.1	15.03	13.58	0	33.34	27.76	83.3
TOTAL	100	100	100	100	100	100	100	100

REGIONAL STRUCTURE OF COMPLAINTS BY CATEGORY OF RIGHT VIOLATED
FEBRUARY-APRIL 1993
(PERCENTAGES)

	SS	SA	SV	SK	C	U	Total
Right to life	57.65	17.65	3.53	7.06	10.59	3.53	100.00
Right to integrity	45.12	25.61	8.54	15.85	1.22	3.66	100.00
Right to security	50.00	26.09	0.00	15.22	8.70	0.00	100.00
Due process	20.87	12.17	23.48	28.70	13.04	1.74	100.00
Personal freedom	53.66	12.20	9.76	12.20	12.20	0.00	100.00
Freedom of expression	20.00	0.00	0.00	40.00	40.00	0.00	100.00
Freedom of association	40.00	40.00	10.00	10.00	0.00	0.00	100.00
Personal documentation	0.00	0.00	50.00	25.00	0.00	25.00	100.00

SS San Salvador Regional Office

SA Santa Ana Regional Office

SV San Vicente Regional Office

SM San Miguel Regional Office

C Chalatenango Subregional Office

U Usulutan Subregional Office

TABLE 1

COMPLAINTS DECLARED ADMISSIBLE DURING PERIOD COVERED BY SEVENTH REPORT

(ALL CATEGORIES OF RIGHTS)

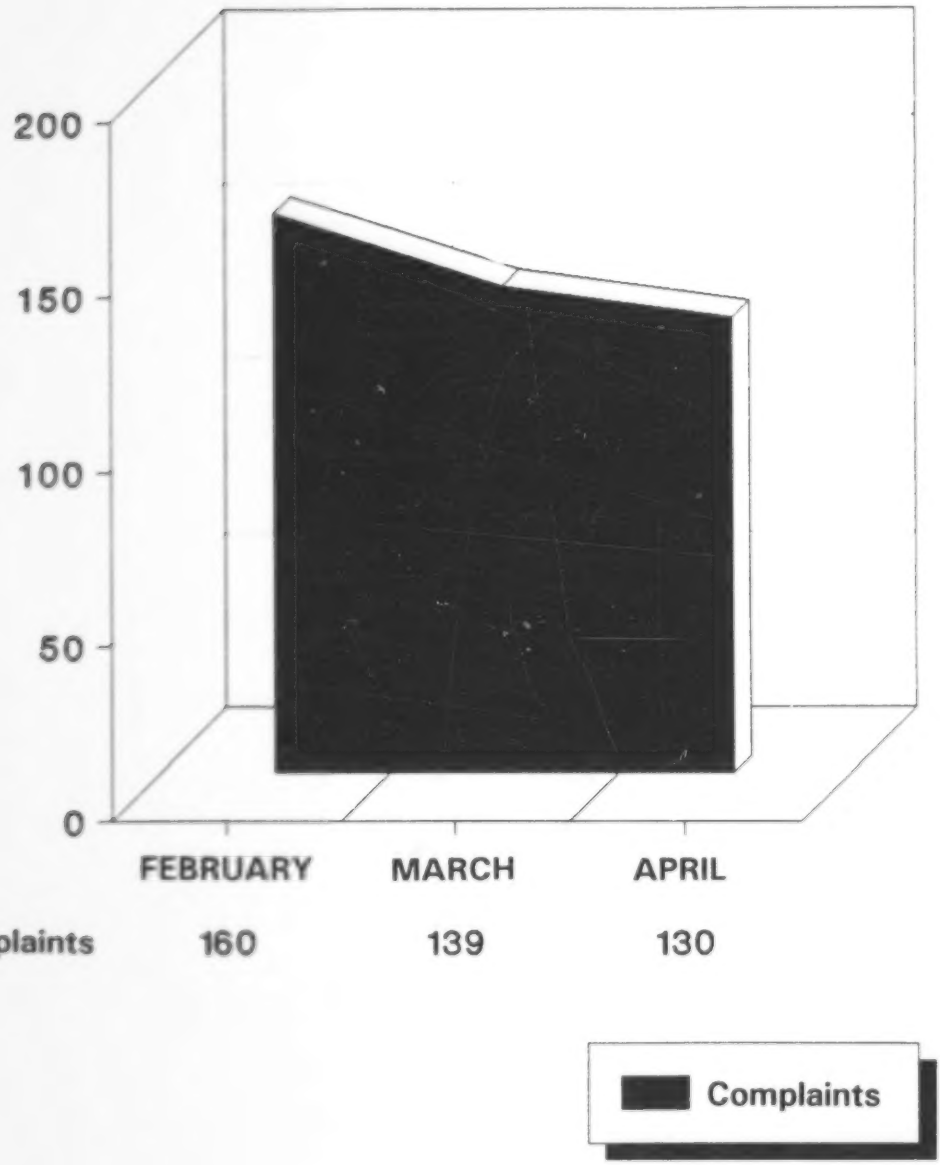
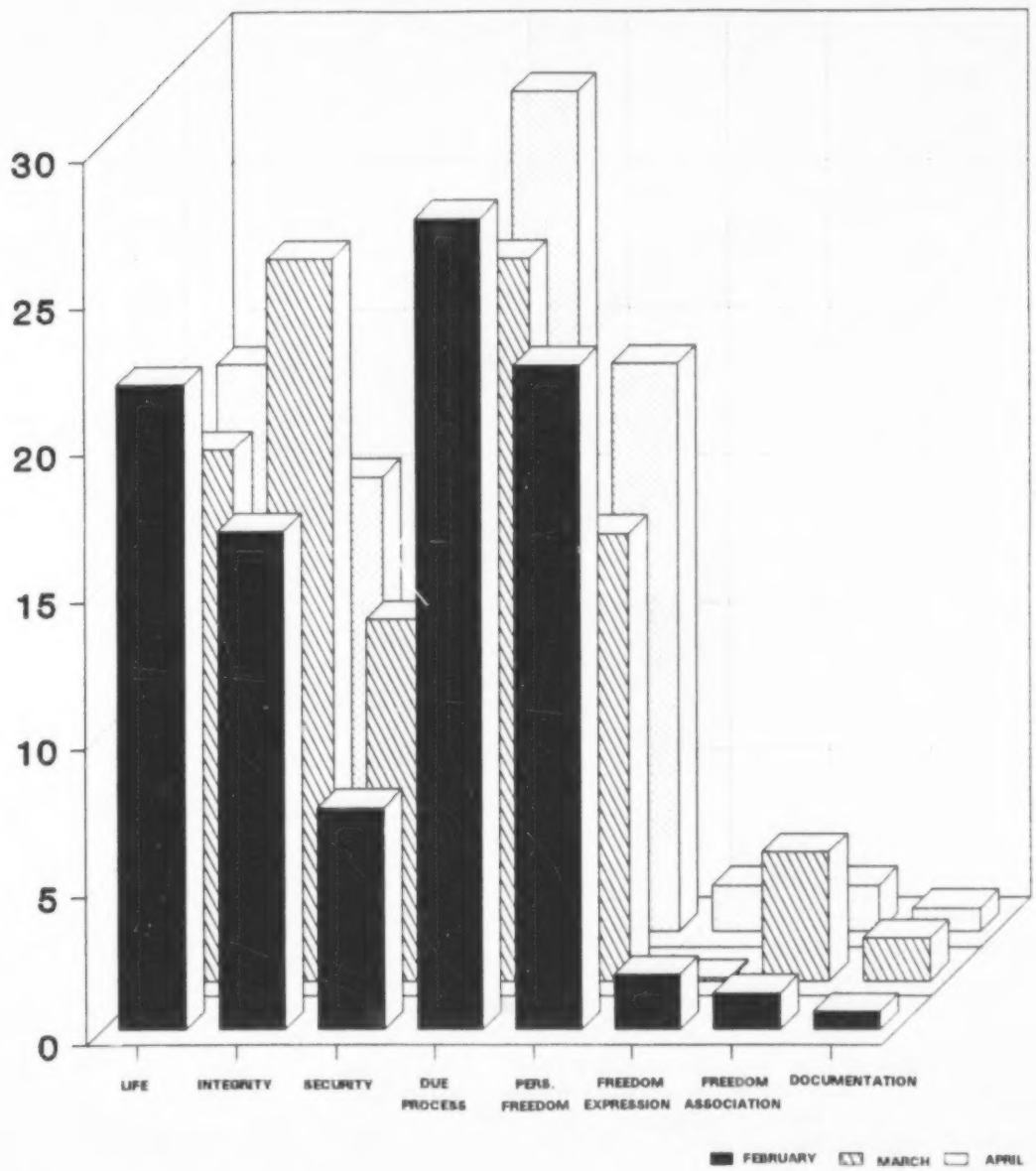


TABLE 1 (continued)

COMPLAINTS DECLARED ADMISSIBLE BY CATEGORY OF RIGHT VIOLATED DURING PERIOD COVERED BY SEVENTH REPORT



EXPRESSED AS PERCENTAGES

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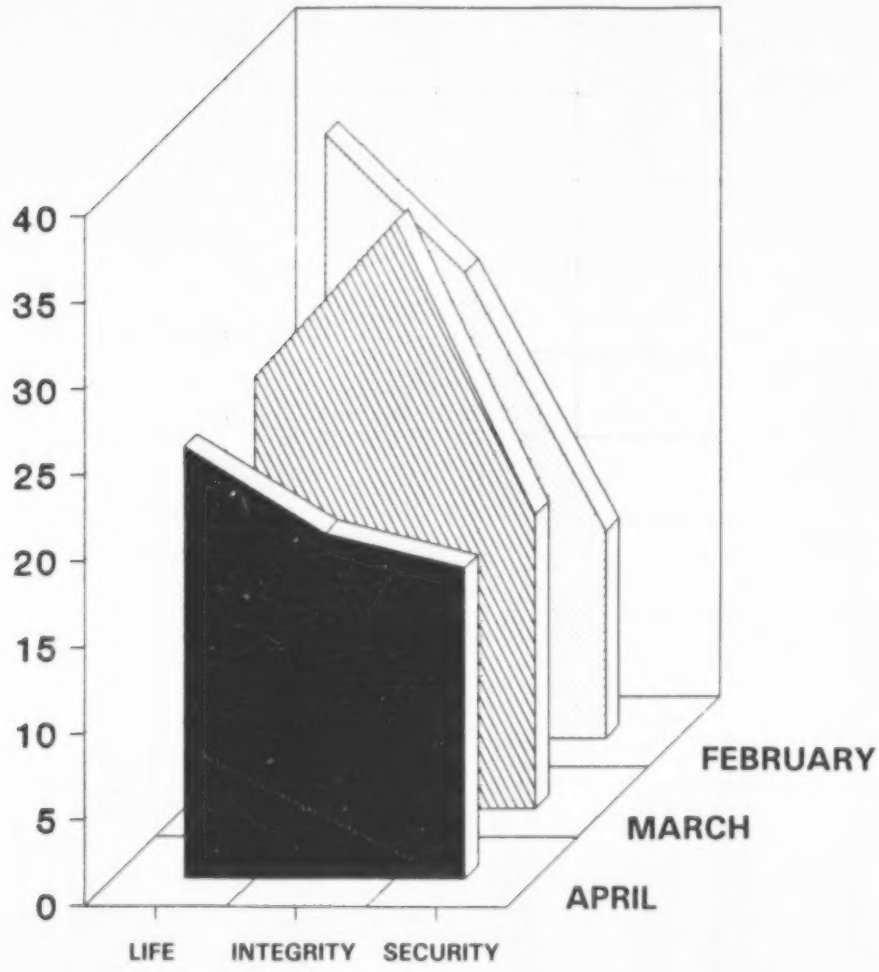
TABLE 2

VIOLATIONS OF THE RIGHTS TO LIFE, INTEGRITY AND SECURITY DURING PERIOD COVERED BY SEVENTH REPORT

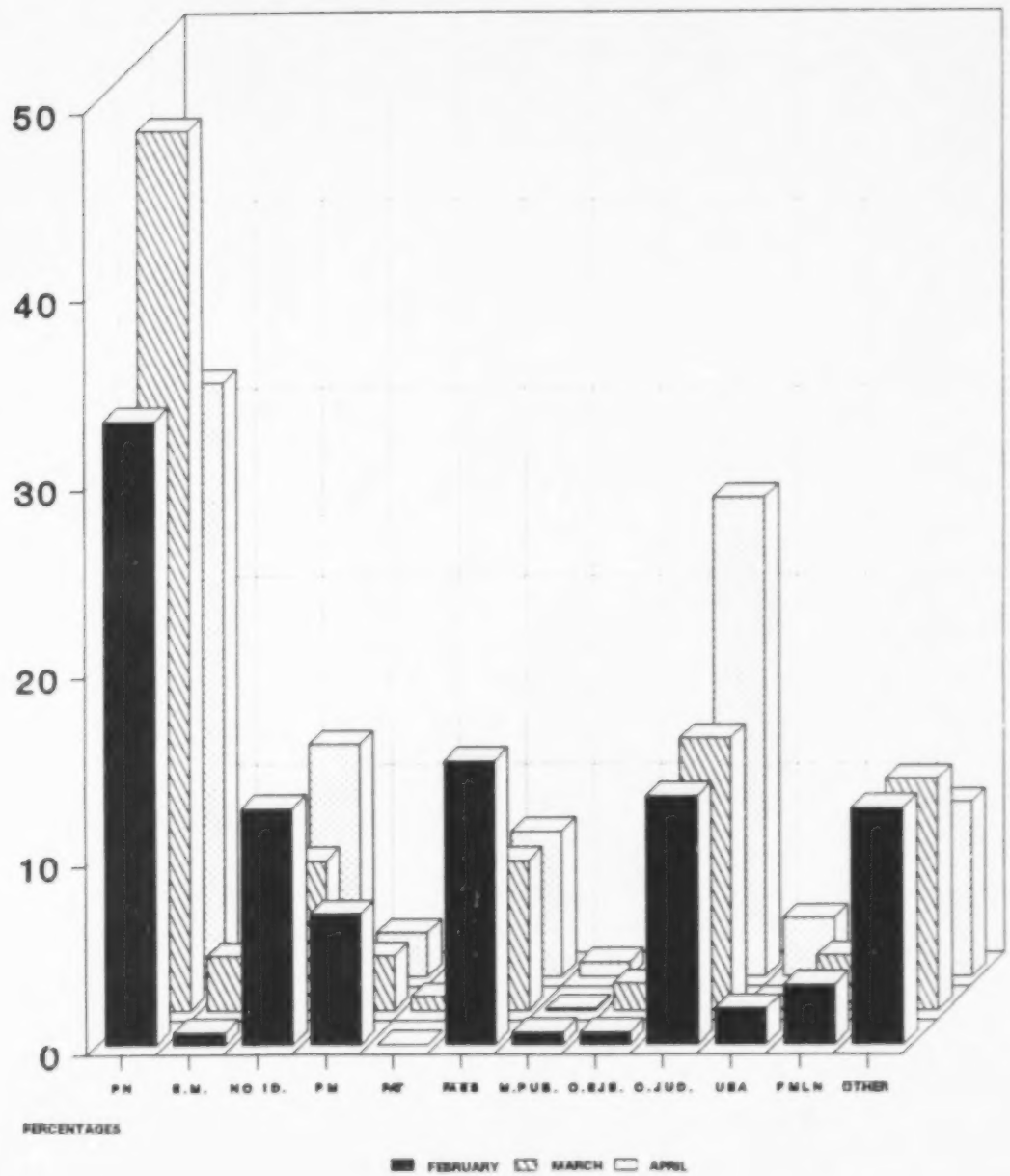


FEBRUARY	35	27	12
MARCH	25	34	17
APRIL	25	20	18

TABLE 3

PERSONS PRESUMED RESPONSIBLE

(PERIOD COVERED BY SEVENTH REPORT)



KEY

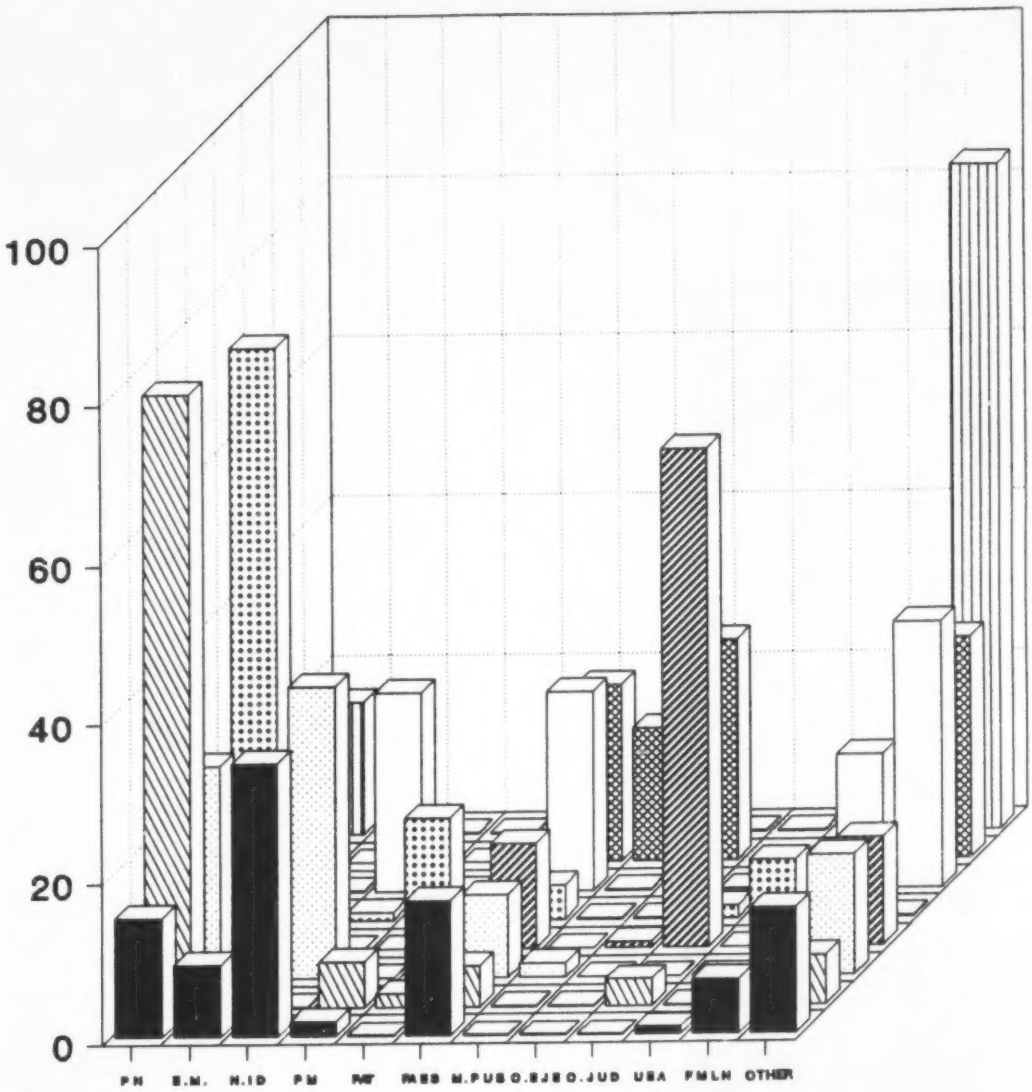
PN = National Police
S.M. = Death Squads
NO ID. = Persons unknown
PM = Municipal Police
PAT = Auxiliary Transitory Police
FAES = Armed Forces
M.PUB. = Public Prosecutor's Office
O.EJE. = Administration
O.JUD. = Judiciary
UEA = Anti-drug-trafficking unit

/...

TABLE 3 (continued)

PERSONS PRESUMED RESPONSIBLE BY CATEGORY OF RIGHT

(PERIOD COVERED BY SEVENTH REPORT)



PERCENTAGES

LIFE | INTEG. | SEC. | DUE PROC. | PERS. FR. | FR. EXPR. | FR. ASSOC. | DOC.

KEY

PN	= National Police	FAES	= Armed Forces
S.M.	= Death Squads	M.PUB.	= Public Prosecutor's Office
NO ID.	= Persons unknown	O.EJE.	= Administration
PM	= Municipal Police	O.JUD.	= Judiciary
PAT	= Auxiliary Transitory Police	UEA	= Anti-drug-trafficking unit

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TABLE 4

VERIFICATION OF ADMISSIBLE COMPLAINTS CONCERNING ENFORCED DISAPPEARANCES DURING PERIOD COVERED BY SEVENTH REPORT

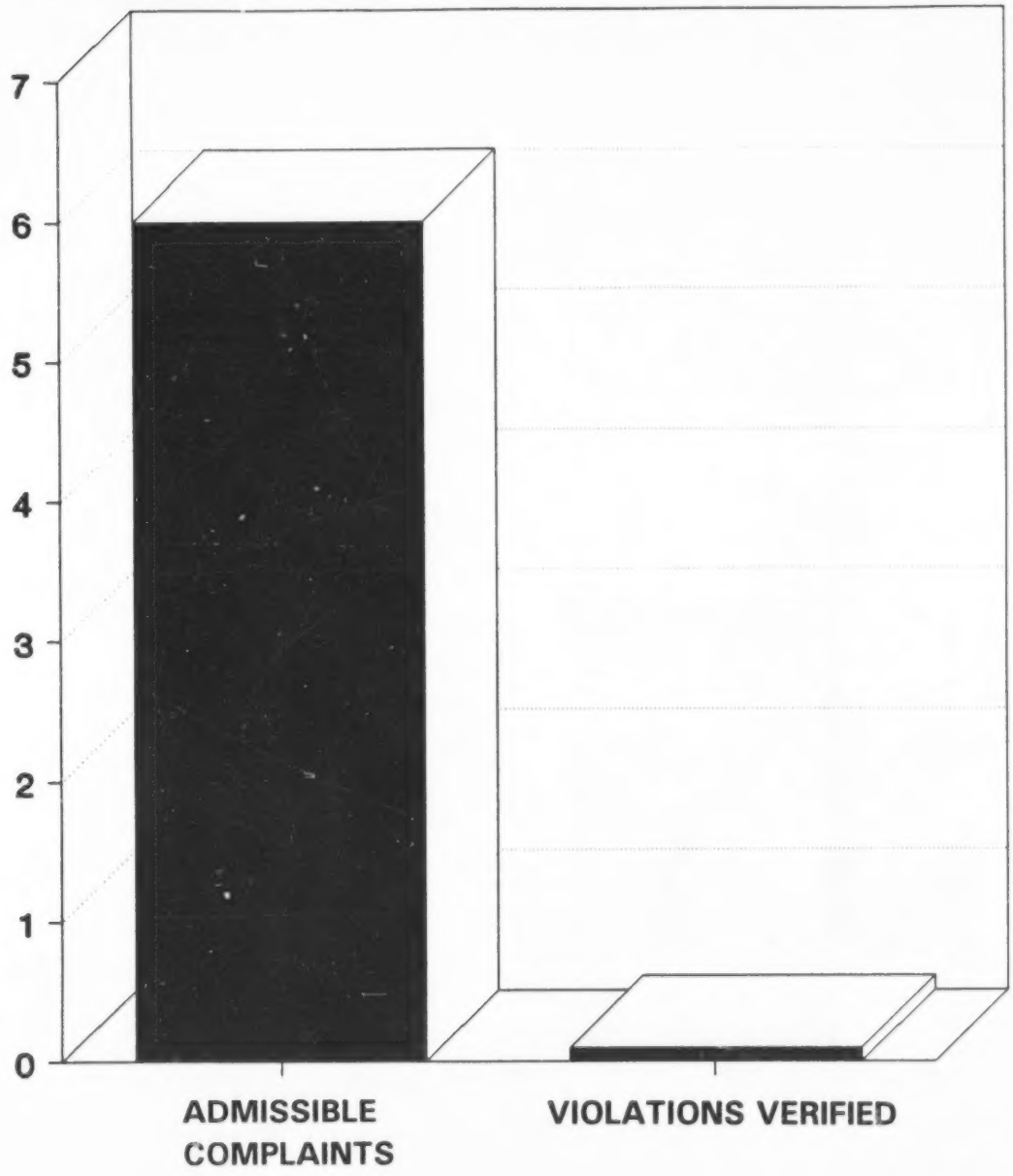


TABLE 4 (continued)

VERIFICATION OF ADMISSIBLE COMPLAINTS CONCERNING TORTURE DURING PERIOD COVERED BY SEVENTH REPORT

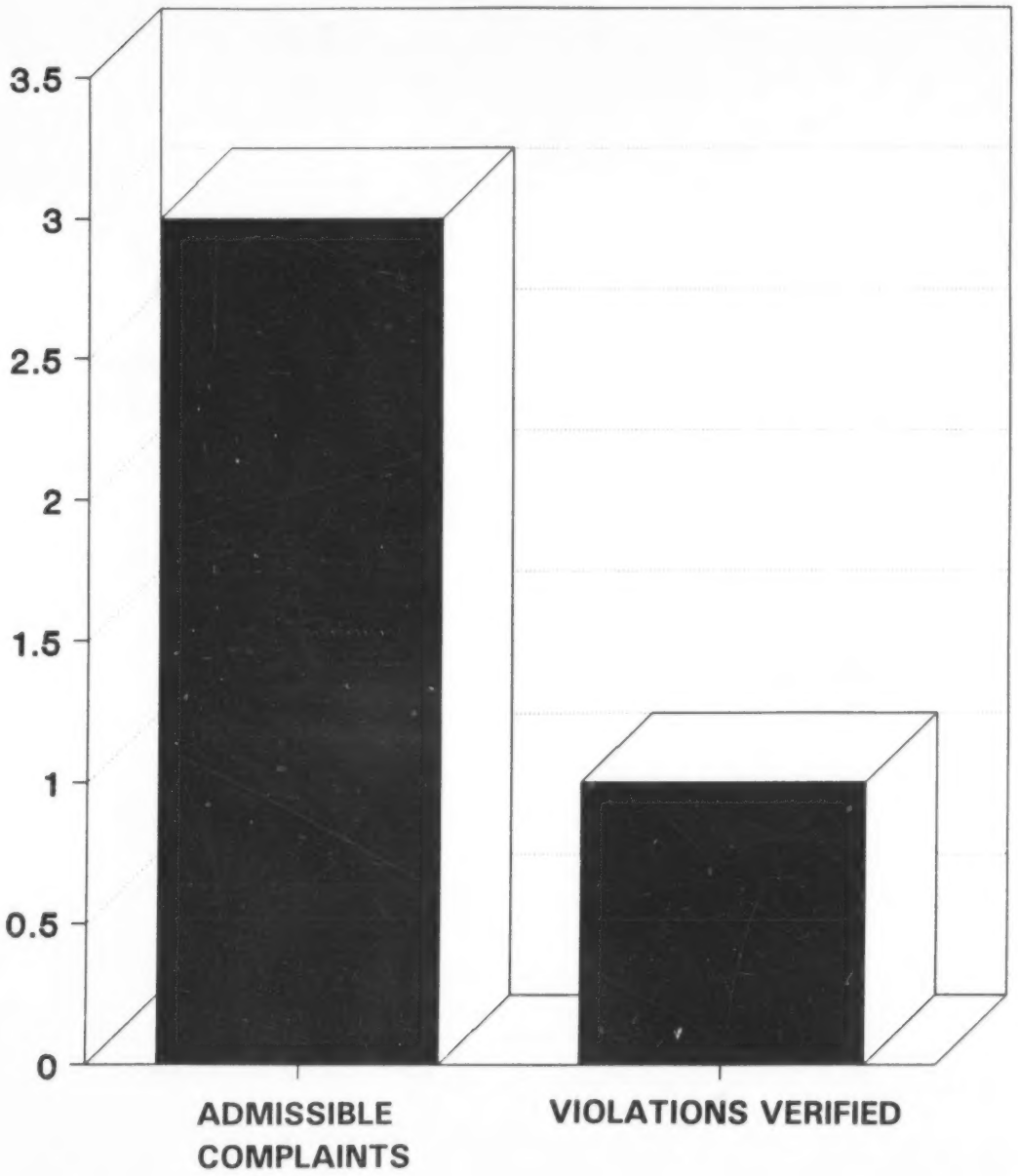


TABLE 5

DECISIONS REJECTING OR GRANTING HABEAS CORPUS PETITIONS

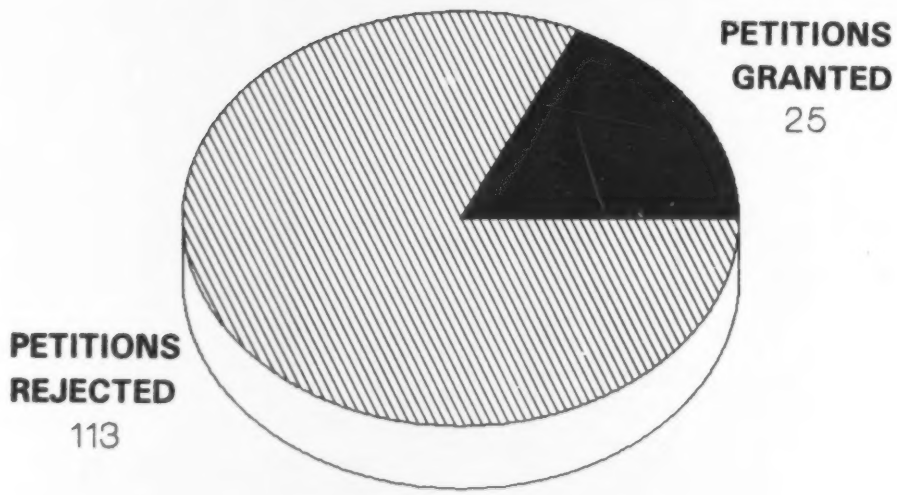


TABLE 5 (continued)

DECISIONS CONFIRMING DETENTION OR REFERRING CASES BACK TO COURT OF ORIGIN

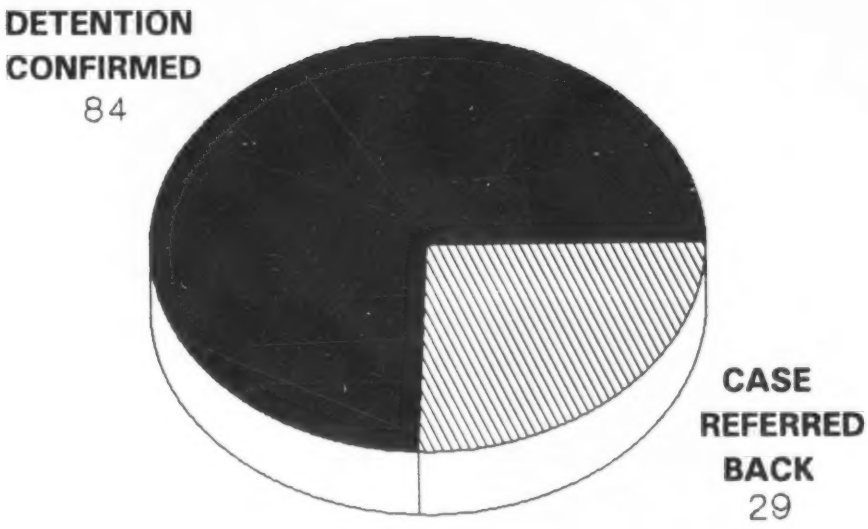


TABLE 6

HABEAS CORPUS DECISIONS GRANTING RELEASE OF DEFENDANT

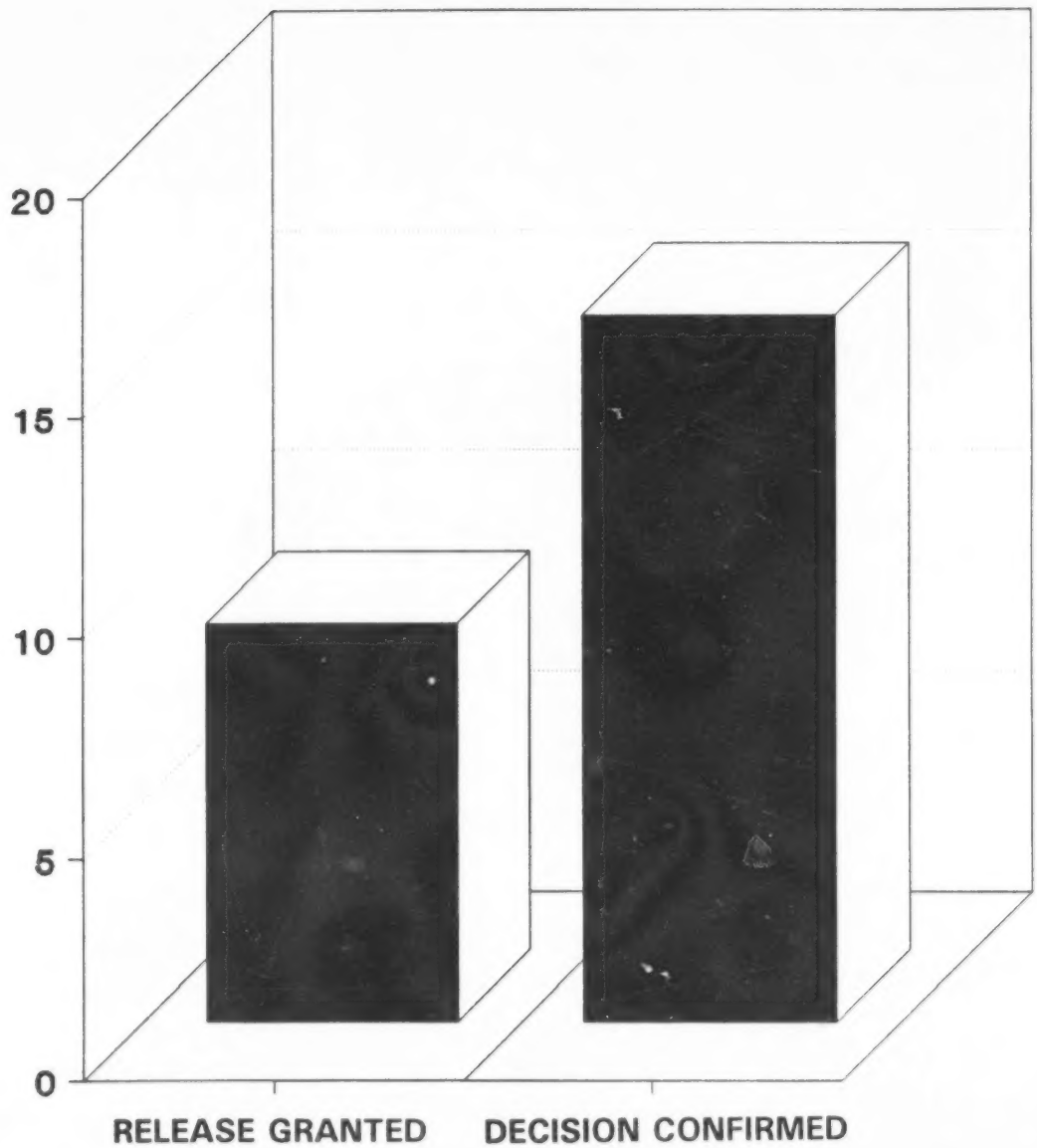
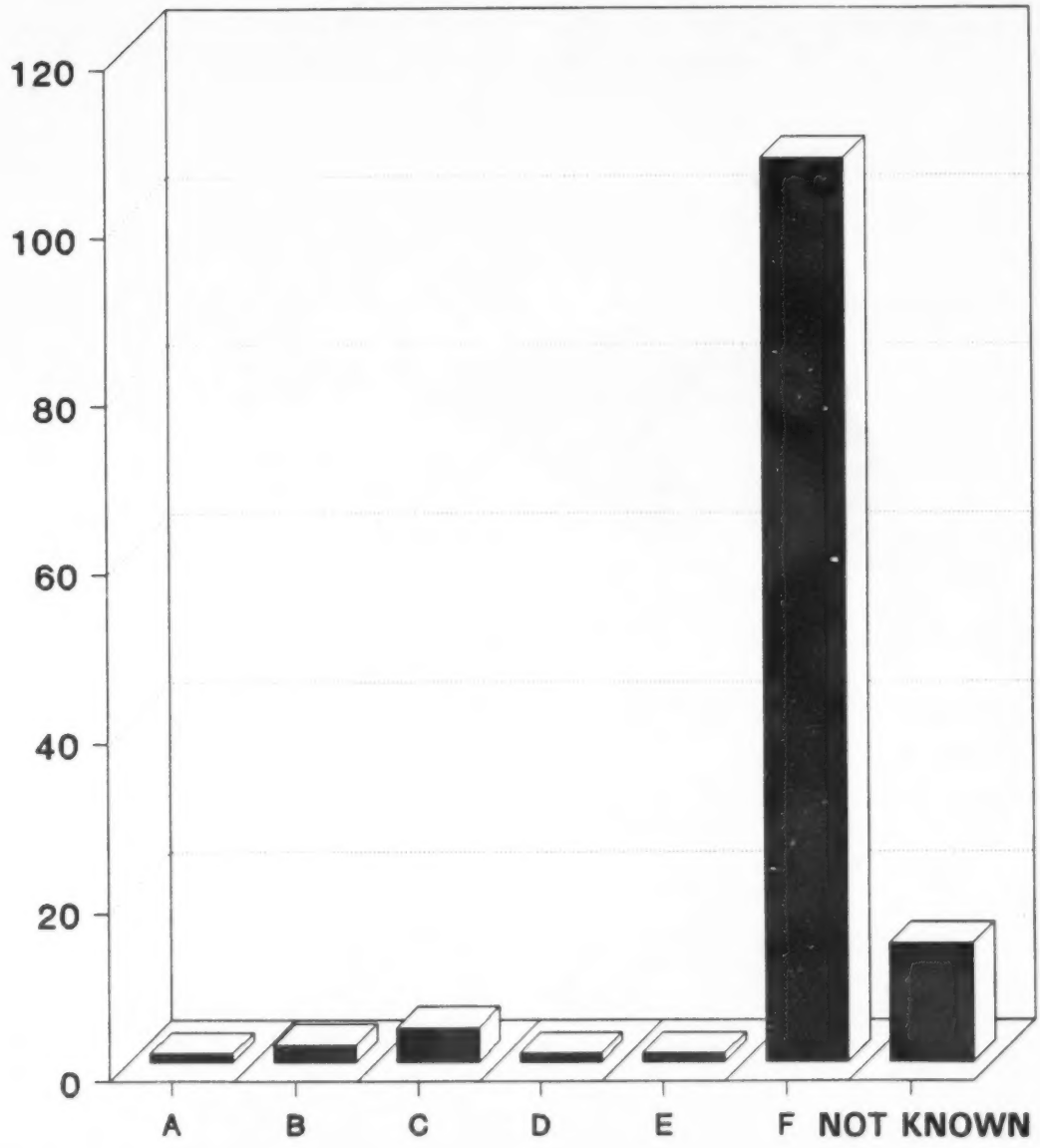


TABLE 6 (continued)

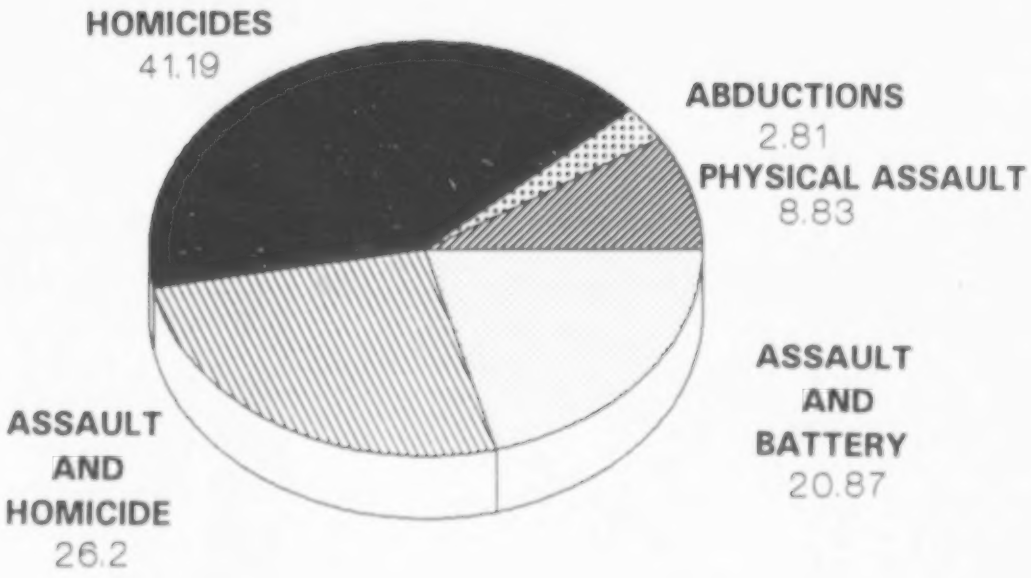
AUTHORITY TO WHICH HABEAS CORPUS PETITION WAS ADDRESSED



A: TRANSIT COURT - B: CRIMINAL CHAMBER
C: TREASURY COURT - D: MAGISTRATES COURT
E: MILITARY COURT - F: CRIMINAL COURTS

TABLE 7

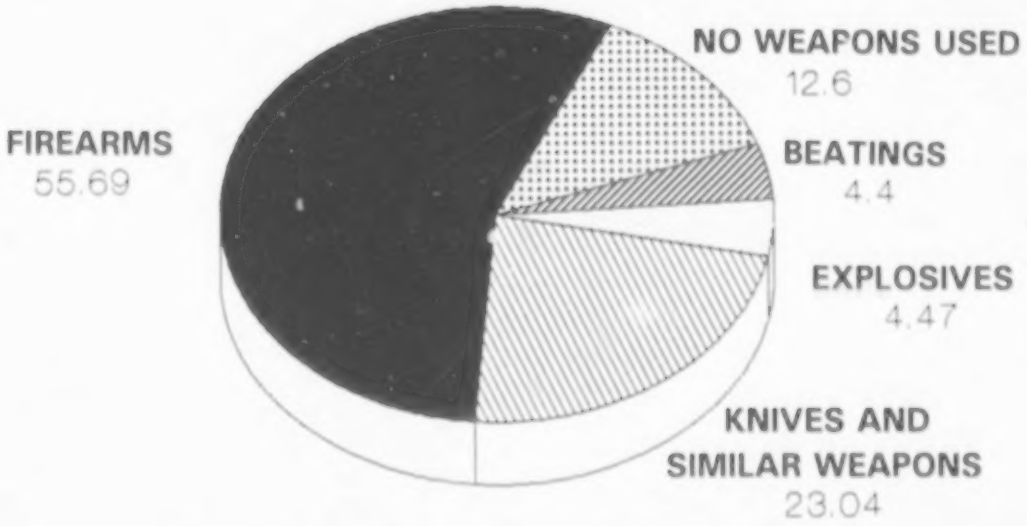
CRIMINAL OFFENCES COMMITTED DURING PERIOD COVERED BY SEVENTH REPORT



EXPRESSED AS PERCENTAGES

TABLE 7 (continued)

WEAPONS USED IN CRIMINAL OFFENCES DURING PERIOD COVERED BY SEVENTH REPORT



EXPRESSED AS PERCENTAGES